Indian Claims Commission

Primrose Lake Air Weapons Range

Report On: Canoe Lake Inquiry
Cold Lake Inquiry

AUGUST 1993

102-02501/

EXECUTIVE SUMMARY

INTRODUCTION

In October 1992 the Indian Claims Commission of Canada commenced inquiries into the historical land claim grievances of two Indian First Nations. They were the Cold Lake First Nations in Alberta and the Canoe Lake Cree Nation in Saskatchewan. Both claims arise from the decision of the Government of Canada in the early 1950s to take abruptly and without prior notice some 4500 square miles of land, which included the traditional lands of these peoples, to create a vast bombing and gunnery range known as the Primrose Lake Air Weapons Range.

The journey we undertook as Commissioners in conducting these inquiries, and in preparing this report, has been a moving experience, deeply touching each of us as Canadians.

This Commission was created in August 1991 in the aftermath of the tragedy of Oka. It was established by the Government of Canada in consultation with the Chiefs Committee on Claims and the Assembly of First Nations. It embodies a consensus existing among Canadians that historical aboriginal grievances must now be addressed quickly and fairly. To that end the Commission was struck as an independent body of inquiry empowered to examine aboriginal land claim grievances arising from such things as the fulfilment of Indian treaties. We are not a court of law. We do not conduct ourselves as a court of law. One of the tasks we have been given is to conduct inquiries into those land claims which government classifies as "specific claims." We are to report our findings on whether or not a claim was properly rejected and make recommendations to the parties. In these inquiries our task is to investigate and obtain as complete a record as possible.

As a Commission we are directed to examine the validity of such claims with reference to the specific claims policy, published by the Government of Canada in 1982 in a document entitled *Outstanding Business.* Under that 1982 policy a valid land claim is said to exist if the federal government has breached a "lawful obligation" owing to an Indian First Nation.

We are required, upon completion of any inquiry, to deliver our findings and recommendations to the parties (ordinarily the Bands and government ministries, as is the case here) and report to the Cabinet of the Government of Canada.

ISSUES BEFORE THE COMMISSION

The overall question this Commission has been asked to examine and report on is rudimentary: Did the Government of Canada properly reject the land claims of the Cold Lake and Canoe Lake First Nations in 1975 and 1986? In other words, did the government breach any lawful obligation, as set out in *Outstanding Business*, to these Bands?

The resolution of this issue involves answering two questions:

> 1. Did the Government of Canada breach its treaties with the peoples of Cold Lake First Nations (Treaty 6, 1876) and the Canoe Lake Cree Nation (Treaty 10, 1906) by excluding their people from their traditional hunting, trapping, and fishing territories in 1954 so that those lands could be converted for use as the Primrose Lake Air Weapons Range?

2. Did the Government of Canada breach any fiduciary obligation owed to the First Nations, following the exclusion of their people from their traditional territories?

REVIEW OF THE EVIDENCE

We have said that we are not a court of law. Our function is to enhance the negotiation process established by *Outstanding Business* and to assist in ensuring that the process works. We are expressly directed by *Outstanding Business* to have regard to all historical evidence, including evidence that might not be admissible in a court of law. In these claims we have endeavoured to be true to these responsibilities.

Our investigation involved participating in a process that had never occurred before in connection with these land claims. We had the privilege of visiting these communities and listening to the narratives and disclosures of three generations of people, three generations who have experienced the devastation of exclusion from the air weapons range lands. Much of what we heard was expressed in their native languages.

It is more than 40 years since the air weapons range was established; this was the first chance these people had to express their feelings directly to anybody concerned about their claims. The people expressed their deep appreciation that an Indian Commission such as ours had been struck, after all these years, to travel to their community and listen.

Their evidence can only be described as sincere and compelling. Their moving accounts of their plight were unchallenged and uncontradicted.

We were struck by the totality of the destruction of these communities. After the First Nations were expelled from their traditional lands, their pride and independence were quickly displaced as they faced an inescapable cycle of poverty, and a degrading and almost total dependence on government. The result of this devastation was alcoholism and crippling social ills which the community is still struggling to overcome.

One member of the community described the situation vividly to us:

> Primrose Lake was our livelihood . . . [w]hich was taken away. When Primrose Lake was taken away, it made us what we are today. We used to be proud people. It killed our pride; it killed our culture; it killed everything we stood for. We used to be a proud people; today we are welfare people. We wait for our welfare every month, and there are very few people that have jobs here. There are very limited jobs and most people, like I say, they wait for welfare. When they took our bombing range away, that's what they turned us into -- welfare people. (Francis Scanie, Cold Lake First Nation)

It is clear, from the accounts of the First Nations people and the overall historical record, that when these First Nations signed the treaties their primary concern was to protect and preserve their ability to make a living and to remain self-sufficient. They were persuaded that the treaties were a means of preserving their independence and their traditional lifestyle, based upon the use of the natural resources of the area. Their view that the treaties would protect them was based on assurances and guarantees given by senior government officials and Treaty Commissioners. Again, the evidence is compelling and uncontradicted.

From the signing of the treaties to the creation of the air weapons range in the early 1950s, little had changed within these communities. These people were self-sufficient and living well off the natural resources of their traditional territory. Their lifestyle was communal. They lived and made their homes in their traditional lands in the winter. While many farmed their reserve lands during the summer months, their principal means of support was derived from their traditional lands.

We were given differing accounts of how these people were persuaded to move out of their traditional territory. These included the suggestion that it was to be a brief and temporary measure in the nature of a lease, and that they would receive compensation for their losses. Some expressed a general belief that the government would "do right" by them. We were greatly moved by expressions of their belief that they were giving up these lands temporarily "for the good of Canada." Whatever induced them to depart from their traditional lands, one thing is clear: the creation of the air weapons range completely destroyed their independence. The result for these First Nations was an abrupt and complete termination of a centuries-old traditional lifestyle. The abruptness of the dispossession deprived them of the opportunity to adapt that a more gradual intrusion into their lifestyle would have given them.

When the air weapons range was established, the Government of Canada agreed that compensation was to be paid to those people who had an interest in the assumed territory (including the claimant First Nations). From the beginning Indian Affairs, then involved in interdepartmental disputes, urged plans initially to avoid and then to transform the tragic dislocation of these societies by some form of rehabilitation. Indeed, Indian Affairs assumed the role of negotiator on behalf of the Indians within government. Unfortunately, after a few years of genuine but futile effort, ending sometime in 1961, Indian Affairs lost the internal struggle and the momentum to provide for rehabilitation died away. By that time the First Nations had become impoverished.

Mr. Stan Knapp appeared before the Commission as a witness for the Government of Canada. He was one of the senior government officials responsible for bringing finality to a difficult situation. He advised us that at no time were sufficient planning or resources given to the rehabilitation of these communities, despite the government's original intent. Yet he confirmed as well the grave concerns expressed within Indian Affairs in the late 1950s, over the effect that the establishment of the range would have on the First Nations.

In the last 30 years these claims for fair compensation and reasonable rehabilitation have been repeatedly advanced by the First Nations and repeatedly rejected by successive governments.

CONCLUSIONS

In reaching our conclusions, we must have regard not only to the law of Canada relating to aboriginal treaties and fiduciary duties, but also to the specific claims policy of 1982 (which is the principal guide governing us and the Government of Canada). We must also consider the full historical record and background to these treaties and land claims. We have considered carefully the strict legal interpretation of these issues argued by counsel. However, as we have said, legal argument is only one of the components we are obliged to consider. We must also give effect to the 1982 specific claims policy which calls for justice and fairness in resolving historical aboriginal grievances. Again, we are not a court of law. In our view this policy and the process to implement it must reflect, as fully as possible, the demands of most Canadians for fairness and justice in these matters.

In light of all the historical evidence, and with due consideration of the legal arguments of counsel, together with appropriate regard to *Outstanding Business*, we conclude the following:

1 That as a consequence of the abrupt exclusion of the peoples of the Cold Lake and Canoe Lake First Nations from virtually all of their traditional territories and the consequent destruction of their independent lifestyle despite all assurances and guarantees to the contrary, the Government of Canada is in breach of Treaties 6 and 10.

2 That the Government of Canada was a fiduciary on behalf of those First Nations and breached its fiduciary duty in consciously failing to provide adequate compensation or any means of rehabilitation for the claimant First Nations.

RECOMMENDATION

We have observed in our report that: "If we are to be true to our mandate we must be impartial. This Commission was not established to plead the cause of Indians or to act as an apologist for government. We are satisfied, in these inquiries, to let the facts speak for themselves."

We are satisfied that the facts require us to make the following recommendation:

> THAT THE PRIMROSE LAKE AIR WEAPONS RANGE CLAIMS OF THE COLD LAKE FIRST NATIONS AND THE CANOE LAKE CREE NATION BE ACCEPTED FOR NEGOTIATION PURSUANT TO THE 1982 SPECIFIC CLAIMS POLICY OF CANADA.

INDIAN CLAIMS COMMISSION

PRIMROSE LAKE AIR WEAPONS RANGE REPORT

COLD LAKE FIRST NATIONS REJECTED CLAIM INQUIRY

CANOE LAKE CREE NATION REJECTED CLAIM INQUIRY

PANEL

Chief Commissioner Harry S. LaForme
Commissioner Daniel J. Bellegarde
Commissioner P.E. James Prentice, QC

COUNSEL

For the Cold Lake First Nations
Brian A. Crane, QC / Leonard "Tony" Mandamin

For the Canoe Lake Cree Nation
Delia Opekokew / Alan Pratt

For the Government of Canada
Robert Winogron / Bruce Becker / Francois Daigle

To the Indian Claims Commission
Bill Henderson / Ron S. Maurice

---

17 August 1993

CONTENTS

PART I INTRODUCTION 1

The Report 1
The Background 2
The Recommendation 5

PART II CLAIM AREA 7

Map of Claim Area 7
Description of Area 9

PART III THE CANOE LAKE INQUIRY 11

Treaty 10 11
Dependence on Air Weapons Range Lands 14
The Introduction of Commercial Licences 19
The Destruction of the Traditional Economy 20
Compensation Negotiations 23
- Initial Contact 24
- Compensation for Cabins and Equipment 27
- The 1955 Interim Payments 28
- Interim Payments to Canoe Lake 34
- The Voucher System 42
- The Diminishing Compensation Fund 44
- Negotiating a Final Payment within Government 46
- Negotiating a Final Payment with the Indians 56
- The Intent of the Final Payment 60
- Delivering the Final Payment 63
- Interest on the Compensation Account 69
- Claims for Further Compensation 70

- Economic Rehabilitation 75
  - The Absence of a Plan 75
  - Economic Rehabilitation at Canoe Lake 79
    - The Keeley Lake Fishery 80
    - Expanded Trapping Areas 82
    - The Sawmill 83
    - Local Initiatives 84
  - The Absence of a Program 84
- Long-term Impact of the Air Weapons Range 85

PART IV THE COLD LAKE INQUIRY 89

- Treaty 6 89
- Dependence on Air Weapons Range Lands 93
- The Introduction of Commercial Licences 101
- The Destruction of the Traditional Economy 104
- Compensation Negotiations 108
  - Initial Contact 109
  - Compensation for Cabins and Equipment 111
  - The 1955 Interim Payments 113
  - Interim Payments to Cold Lake 119
  - Negotiating a Final Payment within Government 130
  - Negotiating a Final Payment with the Indians 139
  - The Intent of the Final Payment 143
  - Delivering the Final Payment 145
  - Interest on the Compensation Account 150
  - Claims for Further Compensation 152
- Economic Rehabilitation 155
  - Farming at Cold Lake before the Range 156
  - The Absence of a Plan 158
  - The Failure of the Farming Project 167
  - The Plan That Should Have Been 172
- Long-term Impact of the Air Weapons Range 176

PART V THE COMMISSION MANDATE AND SPECIFIC CLAIMS POLICY 181

The Mandate of the Indian Claims Commission 181
A Supplementary Mandate 183
The Specific Claims Policy 184
The Issue of "Lawful Obligation" 184
Summary of Arguments 186

PART VI FINDINGS AND CONCLUSIONS 191

The Interpretation of Treaties 6 and 10 191
The Relevant Historic Evidence 196
Natural Resources Transfer Agreements 203
The Right to Compensation 207
The Crown was a Fiduciary for the Claimants 209
The Consequences of this Fiduciary Relationship 213
Individual and Band Compensation 219
Conclusions 224
  Was There a Breach of Treaty? 224
  Was There a Breach of Fiduciary Obligation? 226
Recommendation 227

ANNEXES

Annex "A": Canoe Lake Inquiry 229

Annex "B": Cold Lake Inquiry 231

Annex "C": Procedures of the Canoe Lake and Cold Lake Inquiries 233

PART I

INTRODUCTION

THE REPORT

The Indian Claims Commission agreed to conduct these inquiries into the Primrose Lake Air Weapons Range claims of the Cold Lake First Nations and the Canoe Lake Cree Nation. These were originally submitted as a joint claim to the Minister of Indian Affairs and Northern Development in 1975. They were rejected.

The Commission was established in 1991 as an independent body to, among other things, inquire into and report on claims rejected by the Minister. These inquiries were initiated at the request of the claimants.

By letters to the Government of Canada and to the respective First Nations dated October 31, 1992, the Commissioners gave notice of their agreement to conduct these inquiries.[1] Since that date, the inquiries have occasioned the review of more than 6600 pages of documents and the creation of 12 volumes of transcripts from a community session at Canoe Lake, two community sessions at Cold Lake, and further sessions in Toronto and Saskatoon. The Commission also arranged for two reports from outside consultants which now form part of the record as well.[2]

---

[1] Chief Commissioner LaForme to Chief and Council, Cold Lake, 31 October 1992, and Chief Commissioner LaForme to the Ministers of Justice, Indian Affairs and Northern Development, National Defence, and Transport, 31 October 1992, ICC, Exhibit Book, at Tab"D". Also, Chief Commissioner LaForme to Chief and Council, Canoe Lake, 31 October 1992, and Chief Commissioner LaForme to the Ministers of Justice, Indian Affairs and Northern Development, National Defence, and Transport, 31 October 1992, Exhibit Book, at Tab "N".

[2] The records of both inquiries include G.J. Fedirchuk and E.J. McCullough, Historical Context: Treaties 6, 8, 10 (Indian Claims Commission, 1993) [hereinafter cited as Fedirchuk & McCullough]. The record of the Cold Lake inquiry includes Serecon Valuation and Agricultural Consulting Inc., Agricultural Capability Study of the Cold Lake First Nations Reserve Land (Indian Claims Commission, 1993) [hereinafter cited as Serecon].

What follows is a detailed review of what the Commission has learned about the creation of the air weapons range and its impact on the two claimant First Nations. As these inquiries were organized and conducted separately, we will review the record of each inquiry separately in parts III and IV of this report. We feel this is necessary in order to make each part complete in its own right.

Part V of the report is a discussion of the Commission mandate and a summary of the arguments advanced by the parties, followed in part VI by an analysis of any lawful obligations owed to the claimants by the Government of Canada, and also by our findings and conclusions. Three annexes briefly setting out the particulars of each inquiry, and the procedure followed, complete the report.

The panel has been greatly assisted by legal counsel for the First Nations and for the Government of Canada in developing its appreciation of the points at issue in these inquiries. We wish to express our gratitude to counsel at this point for their diligent preparation and careful elaboration of the arguments and materials. The task of this panel would have been far more difficult had this degree of professionalism not been demonstrated by all concerned.

We also wish to extend our thanks to the people of the Cold Lake First Nations and the Canoe Lake Cree Nation for the welcome extended to us during our visits to their communities and for the facilities they made available for the conduct of these inquiries.

THE BACKGROUND

The events leading up to these claims, and ultimately to these inquiries, were set in motion when the Minister of National Defence rose in the House of Commons on April 19, 1951, to make the following announcement.

> Mr. Speaker, I should like to report that agreement has been reached with the provinces of Alberta and Saskatchewan for establishing a large R.C.A.F. bombing and gunnery range roughly 100 miles northeast of Edmonton.
>
> . . .
>
> The range . . . will be roughly centred on Primrose lake. It will stretch about 115 miles from east to west and 40 miles from south to north[3] . . .
>
> There are no settlements in the area, and compensation will be paid for any property rights in trap lines, etc., affected.[4]

The Cold Lake First Nations became parties to Treaty 6 in 1876. The actual reserves, I.R. 149, 149A, and 149B, lie at the northern edge of the prairie, south of the air weapons range. It is clear from the evidence, especially the oral presentations of the elders, that the area around Primrose Lake, which they called "Hahtué,"[5] lying on the border between Alberta and Saskatchewan, was the focal point in the traditional life and economy of these Chipewyan or Dene people. There, they had a small settlement called Suckerville near the narrows of the lake, where there was a seasonal store and a small church.[6]

The Canoe Lake Cree Nation became parties to Treaty 10 in 1906. Their reserves, I.R. 165, 165A, and 165B, are located on Canoe Lake, to the east of

---

[3] 184 kilometres east to west, 64 kilometres south to north.

[4] House of Commons, *Debates* (19 April 1951) at 2173-74 (copy in ICC, Documents, at 249).

[5] Meaning "Geese Lake" in Chipewyan: ICC, Cold Lake Transcript, vol. VI, at 801 (Allan Jacob).

[6] Cold Lake Transcript, vol. VIII, at 1032 (Stan Knapp); also, ICC, Transcript of Argument, at 321-22 (Mr. Mandamin).

Primrose Lake. It is clear that they relied heavily on the area around Arsenault Lake and McCusker Lake in the northern forest of Saskatchewan, both within the range area.

For centuries, both First Nations had pursued their traditional lifestyle based on hunting, trapping, and fishing. Their most productive lands were absorbed in the 4490 square miles taken up by the range. Band members were excluded from the whole of the range lands. This amounted to an expulsion that was devastating to both First Nations.

Canada's records show that the Canoe Lake people had derived 75 per cent of their livelihood from the traditional lands that were included within the air weapons range. The impact upon the Cold Lake First Nation was worse. They lost, or were severed from, the entirety of their traditional lands in the northern forest.

Government always recognized the need to compensate Treaty Indians and others for their losses caused by denial of access to the range. The Indian Affairs Branch, then part of the Department of Citizenship and Immigration, represented the Treaty Indians in negotiations with National Defence. Without consulting the claimants themselves, the departments engaged in a protracted debate over who should qualify for what amount of compensation, over what period, and for what purposes.

In the seven years between 1954 and 1961 the people of both First Nations, now deprived of the best of their traditional lands and, therefore, their livelihood, descended into a cycle of desperation and poverty. They remain impoverished to this day.

The plight of the Cold Lake people was eloquently summarized by two elders of the community.

> Ever since we leased that land, it's a great loss for us. It's pitiful. All what we have learned from our forefathers, all what I have learned from my grandmother, we lost it all.[7]
>
> . . . Eva Grandbois

> Today, we have lost not only our livelihood, we have lost all, even how we felt about one another.
>
> . . .
>
> [A]fter the two payments, there was no more money. We didn't know how to get more money. . . There was some people, they sold everything back. They didn't get very much, but when they were so desperate, they had to sell everything.[8]
>
> . . . Nora Matchatis

A joint claim on behalf of the Cold Lake First Nations, the Canoe Lake Cree Nation, and others[9] was submitted in 1975. The claim alleged a breach of the federal government's trust responsibilities to the claimants, as evidenced by the failure to provide adequate compensation and the failure to provide sufficient retraining and economic rehabilitation. The claim also noted that some Bands, and some individuals, had received no compensation at all.

THE RECOMMENDATION

We agree that the compensation which was paid was inadequate. Furthermore, less than half the Treaty Indians affected received any compensation at all. No compensation was paid into their Band funds. No plan was ever put in place to replace the economic loss the communities had suffered.

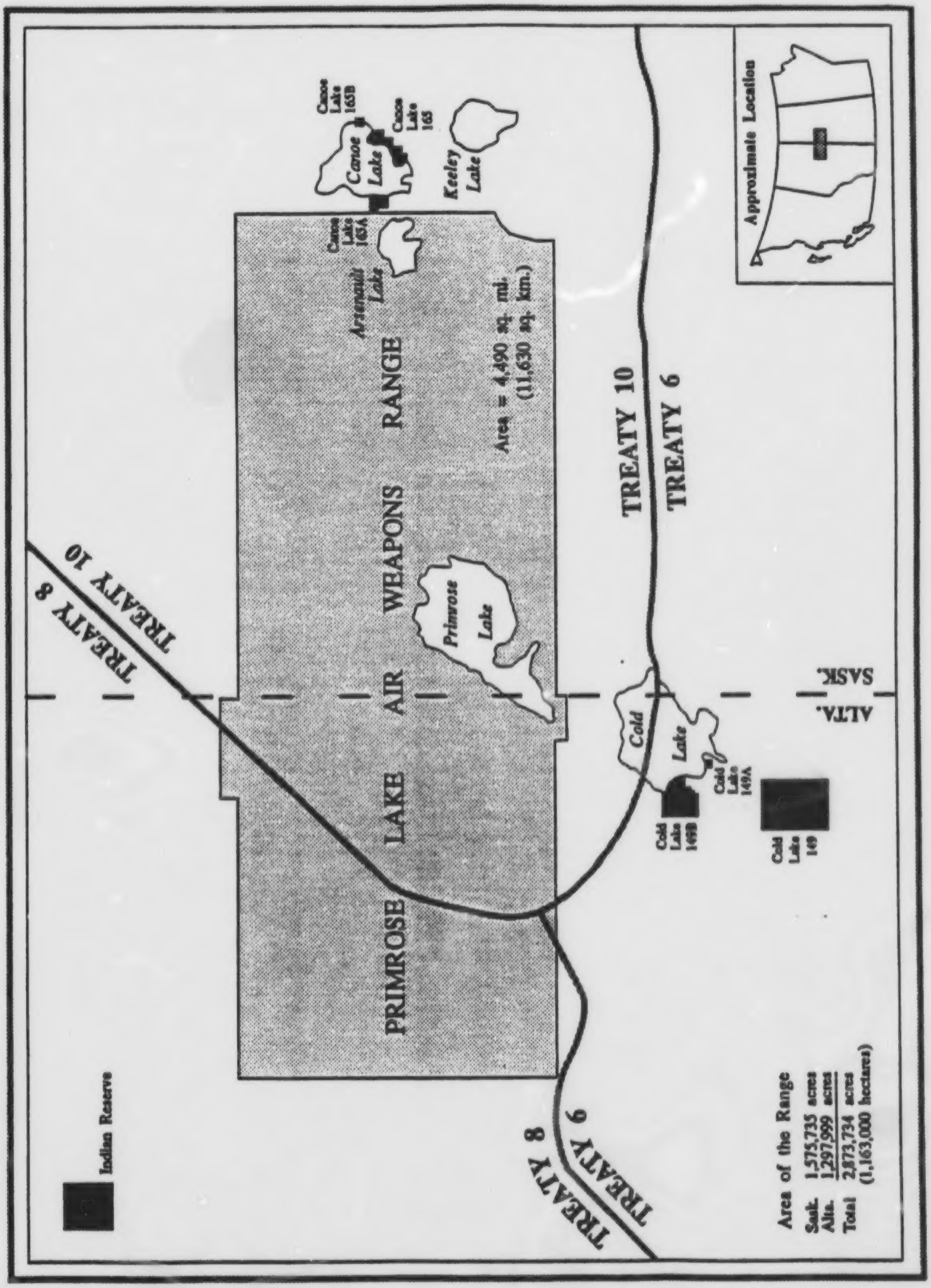
---

[7] Cold Lake Transcript, vol. III, at 441 (Eva Grandbois).

[8] Cold Lake Transcript, vol. II, at 194 (Nora Matchatis).

[9] The original claim was submitted in April 1975 by the Canoe Lake Band, Peter Pond Lake Band, Water Hen Lake Band, Federation of Saskatchewan Indians, Cold Lake Band, and Indian Association of Alberta. Exhibit Book, Tab "C", also Tab "M".

For the reasons set out, we find that the Crown in right of Canada did breach treaty and fiduciary obligations owed to the Canoe Lake Cree Nation and the Cold Lake First Nations. Based on this finding of lawful obligation, it is our recommendation that these claims be accepted for negotiation under the specific claims policy.


PRIMROSE LAKE AIR WEAPONS RANGE
Area = 4,490 sq. mi. (11,630 sq. km.)
Primrose Lake
Arsenault Lake
Canoe Lake
Canoe Lake 165A
Canoe Lake 165B
Canoe Lake 165
Keeley Lake
Cold Lake
Cold Lake 149A
Cold Lake 149B
Cold Lake 149
TREATY 10
TREATY 6
TREATY 8
TREATY 10
TREATY 8
TREATY 6
ALTA.
SASK.
Approximate Location
Indian Reserve
Area of the Range
Sask. 1,575,735 acres
Alta. 1,297,999 acres
Total 2,873,734 acres (1,163,000 hectares)

PART II

THE CLAIM AREA

DESCRIPTION OF AREA

The general area of the Primrose Lake Air Weapons Range is shown on the map found at page 7. The total area of the range is 4490 square miles, of which 2462 square miles are located in Saskatchewan and 2028 square miles are located in Alberta. The reserves of the claimant First Nations are illustrated on the map, as are the treaty and provincial boundaries.

When Treaty 6 was concluded in 1876, the northern boundary of the territory it described[10] was a line tracking the course of the Beaver River, but twenty miles[11] to the north.[12] That line passed through Cold Lake, but was south of Primrose Lake itself. That meant that the Cold Lake people who hunted, fished, and trapped around Primrose Lake regularly crossed the Treaty 6 line when they moved between their reserves at the northern edge of the prairie[13] and their traditional lands in the northern forest.

When Treaty 8 was concluded in 1899, its eastern boundary met the Treaty 6 line just west of Primrose Lake. At that time, Primrose Lake and lands to the east and west of the lake were still not within any treaty area.

---

[10] The treaty boundary lines on the map have not, to our knowledge, been surveyed at any time. They are, therefore, approximations based on the treaty descriptions of them and on information received from the communities.

[11] 32 kilometres.

[12] Treaty 6 is reprinted in A. Morris, *The Treaties of Canada with the Indians* (1880; reprint, Toronto: Coles, 1979) at 351 (ICC, Documents, at 3) [hereinafter cited as Morris].

[13] The intent of Treaty 6, and later Treaty 7, was to complete Canada's acquisition of "the fertile belt." Fedirchuk & McCullough, at IV-36 and IV-37, also II-10. See also Morris, note 12 above, at 168-73, 179, and Cold Lake Transcript, vol. VII, at 823 (John Janvier).

The next boundary to be drawn was the interprovincial boundary between Alberta and Saskatchewan. That line, described as the fourth meridian when those provinces were created in 1905,[14] passes right through Primrose Lake west of the narrows. The traditional area of the Canoe Lake Crees is entirely within Saskatchewan.

After the two provinces were created, Treaty 10 was negotiated to include all the northern lands in those provinces not already covered by Treaty 8.[15] Treaty 10 took in the traditional lands of the Canoe Lake Crees, who signed it in 1906. Because the treaty boundary on the west followed the eastern boundary of Treaty 8, it intruded into Alberta to take in all of Primrose Lake as well as a small area west of the lake.

The final set of lines relevant to these inquiries was drawn when the Air Weapons Range was announced in 1951. The range, extending roughly 50 miles[16] east and west from Primrose Lake, is so nearly centred on the lake that the range took its name: the Primrose Lake Air Weapons Range.

---

[14] See, for example, *The Saskatchewan Act* (1905), 4-5 Edward VII, c. 42, s. 2, reprinted in RSC 1985, App. II, No. 21.

[15] Fedirchuk & McCullough, at VI-60, VI-62, and VI-63.

[16] 80 kilometres.

PART III

THE CANOE LAKE INQUIRY

The Commission held an information-gathering session at Canoe Lake on January 18 and 19, 1993, hearing from 17 witnesses. The details of this inquiry are set out in Annex "A" to this report, and the procedure followed is summarized in Annex "C."

In this section of the report, we examine the history of the claim based on the transcript of the community sessions, the extensive documentation, and the balance of the record of this inquiry.

TREATY 10

The Canoe Lake Cree Nation signed Treaty 10 on September 19, 1906. The purpose of that treaty, from the government's point of view, was to complete the treaty process in the north of Saskatchewan and Alberta, the two provinces which had been created the previous year. The Order in Council establishing the Treaty Commission stated that,

> [I]t is in the public interest that the whole of the territory included within the boundaries of the Provinces of Saskatchewan and Alberta should be relieved of the claims of the aborigines.[17]

The significant recital and operative provisions of Treaty 10 dealing with the cession of Indian rights are as follows:

---

[17] PC 1459 (12 July 1906), in Supplementary Authorities on Behalf of the Canoe Lake Cree Nation, Tab 1, at 3.

> And whereas the said Indians have been notified and informed by His Majesty's said commissioner that it is His Majesty's desire to open for settlement, immigration, trade, travel, mining, lumbering and such other purposes as to His Majesty may seem meet, a tract of country bounded and described as hereinafter mentioned and to obtain the consent thereto of his Indian subjects inhabiting the said tract and to make a treaty . . .
>
> . . .
>
> Now therefore the said Indians do hereby cede, release, surrender and yield up to the government of the Dominion of Canada for His Majesty the King and His successors for ever all their rights, titles and privileges whatsoever to the lands included within the following limits, that is to say: --
>
> [Description of treaty area]
>
> And also all their rights, titles and privileges whatsoever as Indians to all and any other lands wherever situated in the provinces of Saskatchewan and Alberta and the Northwest Territories or any other portion of the Dominion of Canada.[18]

Of special importance in these inquiries is the clause in Treaty 10 dealing with the hunting, trapping, and fishing rights assured to the Indian parties:

> And His Majesty the King hereby agrees with the said Indians that *they shall have the right to pursue their usual vocations of hunting, trapping and fishing* throughout the territory surrendered as heretofore described, subject to such regulations as may from time

---

[18] Treaty 10, in Fedirchuk & McCullough, note 2 above, appendix III.

> to time be made by the government of the country acting under the authority of His Majesty and *saving and excepting such tracts as may be required or as may be taken up from time to time for settlement, mining, lumbering, trading or other purposes.*[19]

In 1907, in his first report following the negotiation of Treaty 10, the Treaty Commissioner, J.A.J. McKenna, stressed the importance of this assurance from the Indian point of view:

> There was a general expression of fear that the making of the treaty would be followed by the curtailment of their hunting and fishing privileges, and the necessity of not allowing the lakes and the rivers to be monopolized or depleted by commercial fishing was emphasized.

To those concerns, the commissioner responded:

> *I guaranteed that the treaty would not lead to any forced interference with their mode of life.*
>
> . . .
>
> In the main, the demand will be for ammunition and twine, as the great majority of the Indians will continue to hunt and fish for a livelihood. *It does not appear likely that the conditions of that part of Saskatchewan covered by the treaty will be for many years so changed as to affect hunting and trapping, and it is expected, therefore, that the great majority of the Indians will continue in these pursuits as a means of subsistence.*
>
> The Indians were given the option of taking reserves of land in severalty, when they felt the need of having land set apart from them. *I made it clear that the*

---

[19] Treaty 10, see note 18 above. Emphasis added.

> *government had no desire to interfere with their mode of life* or to restrict them to reserves and that it undertook to have land in the proportions stated in the treaty set apart for them, when conditions interfered with their mode of living and it became necessary to secure them possession of land. [20]

Counsel for Canoe Lake say that the assurances given by the commissioners amounted to a treaty covenant against forced interference, which they say the Primrose Lake Air Weapons Range certainly was in 1954.

CANOE LAKE'S DEPENDENCE ON THE AIR WEAPONS RANGE LANDS

The Arsenault Lake and McCusker Lake areas within the range were the best hunting, trapping, and fishing areas available to the Canoe Lake Crees. In 1954 they were still heavily dependent on these harvests for their livelihood,[21] and had been for as long as anyone could remember.

> When my dad was still active in trapping and fishing in that western area now known as the Primrose Air Weapons Range, he took over the footsteps of his grandparents -- his mom and grandparents -- who had been [on] that land for generations and generations. Mrs. Josephine Moore, she died in 1967 at the age of 97, she used to go out there, west of Canoe Lake, west of Keeley and all that area now known as the air weapons range,

---

[20] Report of Commissioner J.A.J. McKenna to the Superintendent General of Indian Affairs, 18 January 1907, in Supplementary Authorities on Behalf of the Canoe Lake Cree Nation, Tab 1, at 6-7.

[21] See, for example, Department of Mines and Resources, *Annual Report* (Ottawa: King's Printer, 1942) at 147.

> trapping and fishing with her husband.[22]
>
> . . . Ovide Opekokew

> It was at this time, as I grew older and began to participate in trapping and hunting in that area that I began to understand, and I heard stories from the Elders at the time -- my grandparents and other Elders -- that they had lived off of those lands for many years before that; perhaps as many as 150 years ago that people had lived off those lands.
>
> . . .
>
> It was in 1926 or '27 when I first really started to trap those lands in that area . . .
>
> . . .
>
> In more recent times, we did fishing in those areas -- a lot of commercial fishing . . .
>
> I found that the lands were really rich and bountiful for animals at the time. My friend and partner, I talked about a little bit earlier, the one that was killed by a tree, he and I used to travel and trap around there quite a bit. There were a lot of fox and coyotes that we harvested out of there during those years.[23]
>
> . . . Jonas Lariviere

> As far as I can remember, all our livelihood came from west of Canoe Lake, what is now the bombing range. Ever since I can remember, when I was a child, my father used to go hunting and do his trapping over there. We were practically raised in that area. My father had a cabin over there, and we lived over there quite a bit of the time.[24]
>
> . . . Eugene Iron

---

[22] ICC, Canoe Lake Transcript, vol. 2, at 202 (Ovide Opekokew).

[23] Canoe Lake Transcript, vol. 2, at 253-54; see also 258 (Jonas Lariviere).

[24] Canoe Lake Transcript, vol. 1, at 93 (Eugene Iron).

> 1940 was the first time I went fishing over there in Arsenault Lake, when I was a young man. I used my father's nets at that time to go fishing over there. 1940. The lake was rich in fish at that time. The fish population was very, very good at the time. In some instances in one net there would be 200 fish in each of the nets. The population was so good. The fish were not sold by the pound at the time. Buyers came around and counted numbers of fish, and that's how they purchased the fish from the fisherman -- at ten cents a fish.[25]
>
> . . . Joseph Opekokew

> That land in the Arsenault Lake area was very bountiful land. We loved it. We went there all the time. We did all our trapping, fishing and hunting over there.[26]
>
> . . . Marius Iron

> Yes. They made a lot of money through catching fur. They made a good living.[27]
>
> . . . Christine Iron

> During the fall and winter, until spring breakup, we spent almost all of our time hunting and trapping off reserves in the Arsenault Lake area, about thirty kilometres west of Canoe Lake.
>
> The summers were spent in the community, gathering berries and fishing, with lots of social interaction and events.
>
> What I am stressing, by telling you how we used to live, is that we depend on these lands and our hunting

---

[25] Canoe Lake Transcript, vol. 2, at 54 (Joseph Opekokew).

[26] Canoe Lake Transcript, vol. 1, at 25 (Marius Iron).

[27] Canoe Lake Transcript, vol. 1, at 109 (Christine Iron).

> and trapping territories.[28]
>
> . . . Leon Iron

> We lived off that land; that was our place. Our livelihood came out of there.[29]
>
> . . . Marius Athanase Iron

> When you think back, the living was good -- excellent.[30]
>
> . . . Eugene Iron

Many families had base cabins on the major lakes, with smaller cabins out along the trap lines. Young people would learn the skills needed to prosper through example from their elders.

> Again, the next fall, we returned over there. We built cabins out there for trapping the next year. Eventually, in 1931 I reached the age of the time for me to go to school, and I was sent off to [residential] school [in Beauval] in 1931, while they continued to hunt and trap over there in those lands.
>
> . . .
>
> [After leaving] school, I returned back home and started again to travel with my father to go trapping and hunting in the Arsenault Lake area.[31]
>
> . . . Jean-Marie Iron

---

[28] Canoe Lake Transcript, vol. 2, at 150 (Leon Iron).

[29] Canoe Lake Transcript, vol. 1, at 24 (Marius Athanase Iron).

[30] Canoe Lake Transcript, vol. 1, at 90 (Eugene Iron).

[31] Canoe Lake Transcript, vol. 2, at 234-35 (Jean-Marie Iron).

I was fourteen years old when my father first took me around this area and taught me how to do trapping. Eventually, as I grew older, I was able to do the trapping on my own, and I learned enough to go on my own.[32]

. . . Eugene Iron

Most people took their families with them during the fall-winter-spring seasons, and did not return to Canoe Lake for long periods of time.[33]

. . . Leon Iron

MR. HENDERSON: Would the rest of the family -- the other children -- have been in school at that time as well?

MR. OPEKOKEW: Yes, but there were some at home. In the fall or early spring they would be out there with my dad. Actually, my dad had a cabin and a barn at Arsenault Lake.

. . .

MR. HENDERSON: I believe you said, you said earlier that it was on a creek.

MR. OPEKOKEW: That was another one, a cabin he had south of Canoe, a place called Broad Creek.

. . .

COMMISSIONER PRENTICE: Did the younger people from your generation and the generation which has followed, did they have an opportunity to learn some of the traditional ways -- hunting and fishing and trapping?

MR. OPEKOKEW: Not really, because there was no place to go. [34]

. . . Ovide Opekokew

---

[32] Canoe Lake Transcript, vol. 1, at 93 (Eugene Iron).

[33] Canoe Lake Transcript, vol. 2, at 150 (Leon Iron).

[34] Canoe Lake Transcript, vol. 2, at 206, 212 (Ovide Opekokew).

Based on all the evidence, it is clear that the Canoe Lake Crees followed a traditional lifestyle on land which became part of the Primrose Lake Air Weapons Range. The area around Arsenault and McCusker Lakes was the most productive of their traditional lands and there was heavy reliance on the commercial, food, and other resources found there. Prior to 1954, there had been no interference with their use of those lands. Before they were excluded from the range in that year, the Canoe Lake people had a strong sense of community and strong family units, both centred on their relationship with the land.

THE INTRODUCTION OF COMMERCIAL LICENCES

The area used by the Canoe Lake Cree Nation was part of a management district of Saskatchewan called Conservation Area No. A-13. During the 1940s, the province introduced licensing for commercial fishing and trapping.

> Trapping is done on a community basis rather than the strictly individual trapline. However, even though on a community basis the Indians respect each other's chosen locations.[35]
>
> . . . W.G. Tunstead

> In 1942 I started trapping in that area. Some time around 1947 the province came around and blocked off certain areas for trapping -- fur blocks we call them now.[36]
>
> . . . Joseph Opekokew

> In the beginning, when I first started, we didn't need any trapping licences. All we needed was the treaty number.

---

[35] W.G. Tunstead to J.A. Davis, 1 February 1952, National Archives of Canada [hereinafter NA], RG 10, vols. 7334-36, file no. 1/20-9-5 (ICC, Documents, at 295).

[36] Canoe Lake Transcript, vol. 1, at 54 (Joseph Opekokew) .

> We would usually present that to the fur buyer, and the fur buyer would accept the treaty number. That's all we needed.[37]
>
> . . . Jean-Marie Iron

> Yes, we had fishing licences. We paid for fishing licences, but not trapping licences.[38]
>
> . . . Joseph Iron

Government counsel submitted to us that only licence-holders became entitled to compensation when the range area was closed off. The record shows that this is not correct.[39]

THE DESTRUCTION OF THE TRADITIONAL ECONOMY

The traditional way of life still prevailed at Canoe Lake in 1954. The community was isolated. It had not undergone any major change or development since the time of the original treaty. Even commercial fishing was comparatively recent because of the prior lack of access to markets.[40]

> At that time it was hard to get into this area. There were no roads of any sort to speak of.[41]
>
> . . . Jonas Lariviere

---

[37] Canoe Lake Transcript, vol. 2, at 239 (Jean-Marie Iron).

[38] Canoe Lake Transcript, vol. 1, at 26 (Joseph Iron).

[39] As will be seen, a portion of compensation at Canoe Lake was intended for the Band at large.

[40] Canoe Lake Transcript, vol. 2, at 258 (Jonas Lariviere).

[41] Canoe Lake Transcript, vol. 2, at 258 (Jonas Lariviere).

> . . . [T]he only outside communication in the 1950's was via radio-phone.
>
> In 1960 a road and elementary school were built. Prior to that, our children from the reserve had to attend residential school in Beauval, which is about fifty kilometres east of us. It was then accessible only by horse and dog sled.[42]
>
> . . . Leon Iron

When the range was created, it took in 60 per cent of Conservation Area A-13, "where the Indians get practically all their meat for food."[43] The range would also take in "many creeks [with] a very nice stock of beaver which the Indians have been faithfully protecting the last few years." Government noted that this would cut off 75 per cent of the livelihood of the Canoe Lake Crees.[44]

> These were the lands that were really good lands for us to hunt and trap over on the west side, towards Arsenault and McCusker and so on. After the bombing range was established, I tried to go trapping towards the east side of Canoe, but it was very, very difficult over there because there was so much muskeg over on that side.[45]
>
> . . . Jean-Marie Iron

> Then eventually, when the air weapons range was closed to us, we lost three-quarters of our original fur block that belonged to Canoe Lake. Three-quarters of it disappeared

---

[42] Canoe Lake Transcript, vol. 2, at 149 (Leon Iron).

[43] W.G. Tunstead to H.A. Davis, 1 February 1952, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 295).

[44] See text at note 55 below.

[45] Canoe Lake Transcript, vol. 2, at 238 (Jean-Marie Iron).

> inside the air weapons range.[46] Now we are left with a very small piece of area to hunt and trap. After losing our land in the Arsenault Lake area, we were left with this small piece of land close to Canoe Lake here to try and pursue our hunting and trapping, but we were already too many people. To walk out into the bush to do any trapping or hunting, already you were meeting somebody else who had been there ahead of you. It was very difficult.[47]
>
> . . . Joseph Opekokew

> It seemed that times were more difficult after the closing of the weapons range. Hunting and trapping lands were smaller here in this area. There was too much muskeg and, of course, there were more trappers around trying to live off the same lands. At the same time, fur-bearing animals had left the area. There were less muskrat because of the low levels of lake and stream water. There were hardly any beaver at all. There was not much else after that.[48]
>
> . . . Jean-Marie Iron

> Even though my trap line was much reduced and I had to go elsewhere and there was a limited number of fur in the area I went into, the price was good and the cost of living was very, very low. So, it was quite a reasonable living for a period of time. Until today, I am still doing the same thing. I am 78 years old. I still trap and hunt and fish.[49]
>
> . . . Marius Iron

---

[46] A third estimate of the geographic area was two-thirds of the fur block: Canoe Lake Transcript, vol. 2, at 200 (Ovide Opekokew).

[47] Canoe Lake Transcript, vol. 2, at 55 (Joseph Opekokew).

[48] Canoe Lake Transcript, vol. 2, at 242 (Jean-Marie Iron).

[49] Canoe Lake Transcript, vol. 1, at 30 (Marius Iron).

> We tried to hunt and fish elsewhere, but we had access to only two lakes, Keeley and Canoe Lake. The area around these lakes, however, was already over-trapped and over-hunted. The concentration of people in this area meant the land was unable to sustain us. This lack of access to our God-given resources meant that we were not able to make our own living, which in turn meant we were unable to apply our skills. The end result -- the loss of our dignity and pride.[50]
>
> . . . Leon Iron

The dislocation from the range, representing from 60 to 75 per cent of their traditional territory, had predictable and disastrous effects upon the local economy. At least twice the number of hunters, trappers, and fishermen were crowded into the fraction remaining of their harvesting area, and that fraction was the less productive part to begin with. As will be seen, government was well aware of the consequences.

COMPENSATION NEGOTIATIONS

To negotiate compensation of those affected by creation of the air weapons range, the Department of National Defence initially relied upon officials from the Department of Transport to represent the government. These officials took a minimal view of who was deserving of compensation and what they should be paid.[51] When the Department of Citizenship and Immigration, through its Indian Affairs Branch, later undertook to represent the treaty Indians in dealings with DND, the regional supervisor for Indian agencies in Saskatchewan reported that:

---

[50] Canoe Lake Transcript, vol. 2, at 151 (Leon Iron).

[51] See, for example, H.M. Jones to D.M. MacKay, 16 October 1951, NA, RG 10, vol. 7334, file 1/20-9-5 (ICC, Documents, at 268).

> If the Department of National Defence had been labouring under the misapprehension that the land selected for an Air Weapons Range was a useless, deserted piece of country, the figures which the Department has now submitted should serve amply to correct this misapprehension.[52]

The figures he referred to were gathered from a number of sources, but they were compiled and developed into a variety of proposals by senior officials of Indian Affairs in Ottawa. These proposals all showed that compensation would have to be substantial, and several addressed the need to fund economic rehabilitation at the Band level.

Initial Contact

After the range was announced, an Indian Affairs employee named W.G. (Bill) Tunstead met with the Canoe Lake Band to discuss the plans for the range and to estimate its impact on the Indians. He reported as follows:

> Considerable discussion arose particularly with those who would be displaced and later by the rest of the band whose areas would be expected to absorb the displaced trappers.
>
> After discussion their re-action toward the Range was quite favourable and agreeable, but pointed out *they wanted the area back again when it was of no further use as a military project.*
>
> There is a census of 157 Indians living within Conservation Area #A-13. 20 of these take no part in trapping. Of the 137 left, 38 are trapping; 14 of these with families totalling 58 trap within the Bombing Range.

---

[52] J.P.B. Ostrander to Indian Affairs Branch, 25 March 1952, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 344).

> The remaining 24 trappers with families of 79 trap outside the Range. Included are two whose traplines cover both areas.[53]
>
> Relocating the displaced trappers is going to be quite a problem . . .
>
> The outside area cannot be expected to produce very much more upland fur than what it is now doing and still practise conservation. Putting it another way, using last year's fur take as an example, that instead of the $5,531.00 helping to maintain 24 trappers and their families, the number would be 38 and their families. To be added to this are 38 boys now under 16 years of age who will be potential trappers in the near future when they reach their 16th birthday.
>
> . . .
>
> There is none of the Canoe Lake Conservation Block suitable for farming. *Trapping and fishing are the only means of livelihood for these people.*
>
> . . .
>
> *Commercial fishing on Arsenault Lake which is also taken in by the bombing range adds considerable* [sic] *more to the loss of income* by the Canoe Lake Indians. There are no accurate figures available of the individual's returns. Those that I have given are taken from the Indians themselves. The loss of this fish income will now mean a heavier concentration of commercial fishing on Canoe and Keeley Lakes which in turn will mean a reduction to the individual's income.
>
> The Canoe Lake Band have requested that Keeley Lake which is south of Canoe Lake and which they also fish, be localized for the use of members of Conservation Block 13 only. This would include the Indians and Metis

---

[53] Subsequent estimates of the number of Canoe Lake members affected by the dislocation were 117 and 197. The first figure is taken from D.M. MacKay to Deputy Minister, 23 April 1952, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 347). The second number, referring to 94 persons displaced plus 103 affected, is taken from J.P.B. Ostrander to Director, Indian Affairs Branch, 21 March 1955, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 593).

> within the block . . .
>
> . . .
>
> Apart from the loss of fishing and trapping by the bombing range there is the loss of game for food, moose and deer as well as ducks, hides, for the use of clothing. Taking the 157 persons actually living on the Canoe Lake Reserve, a conservative estimate of the value of the meat used would be [$.50] per day,[54] this makes an estimated value of $26,827.50. Hides for footwear, etc. an average of 5 pair of moccasins per year per person at a value of $1.50 per pair would be $1102.00. Totalling $27,929.50. *Of this amount 75% or $20,947.00 value comes from the bombing range.*[55]

When this information was forwarded to Ottawa, part of the response was this:

> It is agreed that if the time ever comes when the area will no longer be used as an Air Weapons Range, the Indians should be reinstated and we will seek a definite understanding to that effect before accepting any settlement. *It is unlikely, however, that this area will be given up in the foreseeable future . . .* [56]

The last prediction turned out to be accurate.

---

[54] It was later suggested that $1 per day would be a better figure, although some might consider it too low as well: J.P.B. Ostrander to Indian Affairs Branch, 4 March 1952, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 335).

[55] W.G. Tunstead to H.A. Davis, 1 February 1952, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 295-96). Emphasis added.

[56] H.M. Jones to J.P.B. Ostrander, 29 February, 1952, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 315). Emphasis added.

Compensation for Cabins and Equipment

Tunstead did an evaluation of the cabins, traps, equipment, and other personal property that would be left behind in the range. There was a suggestion by some witnesses that this was not a thorough investigation.

> The first time I ever rode in a snowmobile or a snow bug was the time with Bill Tunstead, who did a survey of the -- or inventory -- of our buildings in that area. That man didn't completely check out all buildings and trap lands over there, because in some areas he couldn't go in because of the deep snow, and he only gazed and looked at them from the lake at the ice level. So he didn't see all the buildings at all.[57]
>
> . . . Marius Iron

> MR. MAURICE: Do you remember anyone from Indian Affairs or from the Department of National Defence coming out and trying to look at how much fish you caught, how much equipment you had in that area, how much fur you caught in that area?
>
> MR. IRON: No. I don't remember anyone ever asking those questions.[58]
>
> . . . Gilbert Iron

In any event, the figure reported to headquarters for Canoe Lake was $5555, and this was the amount that was distributed to individuals as the first payment. When National Defence requested itemization of the buildings and equipment for all Treaty Indians, a list of goods and their valuation was supplied together with the notation, "The only way further information could be supplied would be to attempt an actual inventory which would be prohibitive in cost."[59]

---

[57] Canoe Lake Transcript, vol. 1, at 25 (Marius Iron).

[58] Canoe Lake Transcript, vol. 1, at 86 (Gilbert Iron); see also 48-49 (Francis Durocher).

The actual payment of compensation for cabins and equipment was reported by Tunstead on February 1, 1955, six months after the range had been closed off.

> Chief John Iron, No. 64, called together those members receiving compensation for loss of equipment, and pointed out to them that as most of them were receiving money from trapping or fishing at the moment, they possibly would not require the full amount.
>
> Following this discussion, from $5500.00 [in fact, $5555.00] compensation distribution $2710.00 was turned back to the Meadow Lake Agency Trust Account to the credit of the individual Indian for later use. Chief John Iron is to be commended for his wise counsel to the members of his band.[60]

The 1955 Interim Payments

It seems to have been clear all along that compensation for cabins and equipment would go to the individuals concerned. The basis for other compensation was not so clear. The Regional Supervisor of Indian Agencies in Saskatchewan suggested a capital fund:

> [T]o fully compensate the [Canoe Lake] Indians in cash would require about $42,000 a year, and *a capital fund of approximately $850,000.00, bearing interest at 5%, would have to be set up* in order to produce that amount annually. Such a figure will probably sound unreasonable when presented to the Department of National Defence, and *I believe that the Indians would accept a great deal*

---

[59] Laval Fortier to C.M. Drury, 14 January 1955, NA, RG 10, vol. 7335, file 1/20-9-5 (ICC, Documents, at 538).

[60] W.G. Tunstead to E.S. Jones, 1 February 1955, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 545).

> *less as payment in full for a permanent surrender of their rights to hunt and trap in the area,* thus the problem which presents itself is *whether we should attempt to buy them off for as little as possible, or set up a capital fund* which will surely return to them in cash, annually, the equivalent of what they are obtaining annually from the natural resources of the country.[61]

Neither the proposal of a permanent surrender of rights nor a permanent annuity fund was adopted. Major D.M. MacKay, then Director of the Indian Affairs Branch, developed a proposal for Canoe Lake for compensation in the amount of $525,875.00, representing 10 years' loss of fur, fish, and game for all purposes, plus 25 per cent intended to compensate "the Band at large for their general hunting and fishing within the area of the air weapons range."[62]

> It would not be advisable to pay the entire amount to the individuals since undoubtedly they would succeed in dissipating the money in a short time. *It is therefore suggested that only the amount for their equipment . . . should be paid to the individuals concerned and that the balance . . . be deposited either to the trust funds of the individual bands concerned or to a central fund* where it would be available to *at least make a substantial contribution toward the rehabilitation program that must be undertaken.*[63]

---

[61] J.P.B. Ostrander to H.M. Jones, 4 March 1952, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 336). Emphasis added.

[62] H.M. Jones to Laval Fortier, Deputy Minister, Citizenship and Immigration, 13 May 1953, NA, RG 10, vol. 7335, file 1/20-9-5 (ICC, Documents, at 394), commenting on D.M. MacKay to Laval Fortier, 23 April 1952, NA, RG 10, vol. 7334, file 1/20-9-5 (ICC, Documents, at 348).

[63] D.M. McKay to Laval Fortier, 23 April 1952, NA, RG 10, vol. 7334, file 1/20-9-5 (ICC, Documents, at 349). Emphasis added. This document will be referred to as the MacKay proposal.

This was the proposal that went forward to the Department of National Defence. It is important to note that the figures advanced by MacKay included fur income, commercial fishing income, and an estimate of the combined value of domestic hunting, fishing, hides, and other by-products. There were, accordingly, both band and individual interests factored into the 10 years' loss of income calculation. We are unable to find any evidence that this proposal had ever been discussed with the people at Canoe Lake.

The amounts generated by the MacKay proposal were forwarded to the Department of Transport, then representing National Defence, as a basis for settlement on May 8, 1952.

> Where other trapping is available it is suggested that a five year basis would be acceptable [Goodfish Lake, Heart Lake, and Beaver Lake] but where no other areas are available ten times the annual value is the minimum figure that could be placed on the resources [Canoe Lake and Cold Lake]. The figures arrived at by this means are $39,980 for equipment and $2,291,064.98 for the fur, fish and game making a total of $2,331,044.98. I may say that this figure is based on the best available information and that the detailed break-down by individuals and bands is available for study if you so desire. *This amount does not consider the larger problem of rehabilitation referred to in my previous letter but it is our opinion that the figure above will,* in addition to providing compensation, *also be sufficient for the major portion of the rehabilitation costs.*[64]

---

[64] The Hon. W.E. Harris, Minister of Citizenship and Immigration, to the Hon. Lionel Chevrier, Minister of Transport, 8 May 1952, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 353). Emphasis added.

As negotiations proceeded over a period of nine more years, the line between compensation and ecomomic rehabilitation was consistently blurred. While the documents do not use either term consistently, we understand compensation -- apart from the payments for buildings and equipment -- to mean payment for loss of direct income and loss of food and other domestic resources. Economic rehabilitation, on the other hand, would refer to a funded program to replace the livelihood that had previously provided the income, food, and other resources. As will be seen, the attempt to achieve both goals, with too little funding to achieve either, led to catastrophe for the community.

General compensation negotiations for the air weapons range were, at this time, still being conducted by the federal Department of Transport on behalf of the Department of National Defence. The Indian Affairs Branch became involved at the request of DND.[65] On November 3, 1952, Laval Fortier, Deputy Minister of Citizenship and Immigration, wrote to his counterpart at National Defence:

> Please be advised that the officials of the Department would be most willing to negotiate *with and on behalf of the Indians concerned* in an effort to arrange a settlement of Indian claims to compensation for their rights in the area under consideration for the air weapons range.[66]

National Defence clearly regarded the MacKay proposal as too generous to the Indians. The Deputy Minister, C.M. Drury, reported a conversation with Fortier in the following terms:

---

[65] C.M. Drury, Deputy Minister, National Defence, to Laval Fortier, 28 October 1952, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 362).

[66] Laval Fortier to C.M. Drury, NA, RG 10, vol. 7335, file 1/20-9-5 (ICC, Documents, at 363). Emphasis added.

> I have spoken to Mr. Fortier regarding the Indians and the proposal to charge us $2 million for resettlement. He tells me that some 500 Indians are involved and I advised him that a figure of $40,000 a head to resettle Indians seemed to me to be grossly excessive.[67]

In fact, the actual calculation of a per capita payment for 500 Indians would have been $4000. Drury subsequently suggested to his Minister that a payment of "two and one half years' revenue would be reasonable for us to pay . . ."[68] His Assistant Deputy Minister introduced another consideration, which lies at the heart of the dispute within government over compensation:

> [I]t might be more realistic for this department to resist a suggested basis of compensation which would be tantamount to taking what would, in effect, be an Indian Reserve, whereas in actual fact *it may be found that the rights of the Indians to these lands may be relatively nebulous.*[69]

On this basis, compensation would no longer be considered by DND in terms of what was necessary or fair, but in terms of what legal rights the Indians had to it. At this point, however, neither Indian Affairs nor the Indians were aware that DND might take such a legalistic approach.

In a letter dated December 30, 1953, the Indian Affairs Branch in Ottawa was advised that both the Alberta Treaty Indian trappers and the Canoe Lake Band had requested that "the Indian Department act on their behalf until final settlement was reached."[70] It would appear they were unaware that the department had assumed that role more than a year earlier.

---

[67] C.M. Drury to Basil B. Campbell, National Defence, 21 March 1953 (ICC, Documents, at 392).

[68] C.M. Drury, Memorandum, 1 April 1953 (ICC, Documents, at 393).

[69] Basil B. Campbell to C.M. Drury, 2 July 1953 (ICC, Documents, at 408). Emphasis added.

On September 29, 1954, the matter of compensation for Treaty Indians was still outstanding and interim letters to DND had gone unanswered. The Deputy Minister of Citizenship and Immigration advised DND that the range area was now closed off and the Indians were alleging that the Indian Affairs Branch had "been negligent in not protecting their interests."[71] By October 25 agreement was reached for an interim payment.

On October 27, 1954, Treasury Board authorized payment for equipment and the equivalent of one year's loss of income to Canoe Lake and four other Bands:

> The Board authorize payment of interim compensation in the amount of $275,779 to the Department of Citizenship and Immigration on behalf of five bands of Treaty Indians who have lost trapping, hunting and fishing areas by reason of the establishment of the Primrose Lake Air Weapons Range being *$39,980 for loss of equipment and $235,799 representing the Department of Citizenship and Immigration's estimate of one year's loss of income by these bands*; chargeable to the Defence Forces Appropriation for the Royal Canadian Air Force.[72]

---

[70] W.G. Tunstead to H.R. Conn, Indian Affairs, 30 December 1953, NA, RG 10, vol. 7335, file 1/20-9-5 (ICC, Documents, at 438).

[71] Laval Fortier to C.M. Drury, 29 September 1954, NA, RG 10, vol. 7335, file 1/20-9-5 (ICC, Documents, at 470).

[72] TB Minute 478149, NA, RG 55, vol. 20545, series A1 (ICC, Documents, at 491). Emphasis added.

The Indian Affairs Branch did establish a central fund to administer this money: the Primrose Lake Air Weapons Range Trust Account No. 440.[73] When Treasury Board authorized a second "interim compensation payment in the amount of $235,799 . . . on behalf of the Treaty Indians who have lost trapping, hunting and fishing areas . . ."[74] in September of 1955, this sum was put into the trust account as well.

There would be no more payments from DND until 1961. The second Treasury Board submission noted that "final consideration" to the Indian settlements would not be given until settlements were reached with non-Indians.[75] In June 1955 the Deputy Minister of Citizenship and Immigration agreed to extend an earlier undertaking that his department would not press for a final settlement for Treaty Indians until DND had reached agreement with the Government of Saskatchewan.[76] The settlement of compensation to Treaty Indians would take almost six years.

Interim Payments to Canoe Lake

After the second interim payment to the Indian Affairs Branch was approved, headquarters wrote to Saskatchewan region instructing the supervisor to "take prompt action" and visit Canoe Lake. "The first decision to be reached is whether a monthly payment should be instituted."[77] That meeting did not occur until February 29, 1956, eighteen months after the range was closed to the Band. The minutes of that meeting, which was attended by 29 Band members, dealt primarily with compensation.

---

[73] H.M. Jones to Chief Treasury Officer, Indian Affairs, 19 November 1954, NA, RG 10, vol. 7335, file 1/20-9-5 (ICC, Documents, at 497).

[74] TB Minute 490634, NA, RG 55, vol. 20590, series A1 (ICC, Documents, at 764).

[75] Hughes Lapointe to Treasury Board, 25 August 1955, NA, RG 55, file 904 (ICC, Documents, at 742).

[76] Laval Fortier to H.M. Jones, 5 June 1955, NA, RG 10, vol. 7335, file 1/20-9-5 (ICC, Documents, at 647).

> Mr. Tunstead explained to the meeting that two payments of compensation had been made to date by the Department of National Defence to the Indian Affairs Branch, but that no knowledge was had of the total amount of compensation that would eventually be paid. Mr. Tunstead further advised the Indians that it was not known how they wanted the distribution of compensation, due each man, made. However, this matter has been given considerable thought by Mr. Jones, Mr. Bell and himself, and the following suggestion was offered for their consideration.
>
> 1. That in view of the fact that those trappers displaced by the "Air Weapons Range" had to move in to what was left of conservation Block A-13, thereby reducing the area of those trappers not affected by the "Air Weapons Range" from which their living was derived, therefore consideration would be given to compensating those persons who were now being crowded into [the] smaller area. *The amount of compensation to be 25% of the compensation paid each year by the Department of National Defence to Indian Affairs for those persons displaced by the "Air Weapons Range."*
>
> 2. *That the other 75% of compensation paid each year to those persons actually displaced by the Air Weapons Range.*
>
> 3. That in view of the fact $5,555.00 had already been paid to displaced persons for loss of equipment from the first year's compensation, that *any*

---

[77] J.P.B. Ostrander to E.S. Jones, 30 September 1955, NA, RG 10, vol. 7335, file 1/20-9-5 (ICC, Documents, at 782).

other money required to purchase rights, such as the fishing rights on Keeley Lake, be taken from the compensation paid for the first year.

4. That from the remainder of the compensation left from the first year's compensation and from the compensation paid each succeeding year, that *a cheque in the amount of $25.00 be made payable each month from the Agency Office* to those trappers displaced by the Air Weapons Range, and in addition, if desired by the individual, funds to their credit would be made available for the purchase of household furnishings, food, clothing and equipment with which to pursue their livelihood.

5. To those Indians trapping in Block A-13 outside the Air Weapons Range and who have now had their area, from which to derive a livelihood, reduced, *a cheque in the amount of $25.00 payable each month from the Agency Office* and in addition, if desired by the individual, funds to their credit would be made available for the purchase of household furnishings, food, clothing and equipment with which to pursue their livelihood.

6. That the amount drawn by any individual not to exceed the amount of compensation due that individual in any one year.

7. That the *funds for the purchase of any items mentioned in 4 and 5 above, over and above the $25.00 per month to be applied for through the Agency Office.*

The Indians were requested to discuss this proposal amongst themselves, ask for clarification of any point not understood. If this proposal for the distribution of compensation not acceptable, then the Indians to put forward a proposal of their own.

After considerable discussion, Chief John Iron, speaking on behalf of the Band, informed Mr. Jones that the proposal for the distribution of compensation met with their entire approval.[78]

---

[78] J.R. Bell to Indian Affairs Branch, 29 February 1956, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 863-64). Emphasis added.

The minutes clearly indicate that compensation was discussed on an annual basis, although the ultimate total compensation was not known. Community members, most of whom heard the explanations through an interpreter,[79] had differing recollections of the time the payments would continue.

> During part of these negotiations I heard about and listened to it at a meeting, again, a twenty-year lease was discussed and also $25 monthly payments would be given out to individuals for however long the bombing range was going to be in use. This is one of the things that I remember they had talked about at that meeting.[80]
>
> . . . Theodore Iron

> What I remember about those meetings is that two time periods were used at the time -- five years and twenty years -- in terms of borrowing the land from us. The way we understood it at the time was that the land would only be in use by the government for a twenty-year period. During that period of time there would be compensation payments made to us.[81]
>
> . . . Joseph Opekokew

> They told us at the end of twenty years that the lease would expire and the land would revert back to its traditional use for the people.[82]
>
> . . . Francis Durocher

---

[79] The minutes note that the interpreter was A. Gervais, incorrectly spelled "Jarvis" in parts of the transcript. There was comment about his abilities in the local Cree dialect: see, for example, ICC, Canoe Lake Transcript, vol. 1, at 130 (Gus Coulineur).

[80] Canoe Lake Transcript, vol. 2, at 229 (Theodore Iron).

[81] Canoe Lake Transcript, vol. 1, at 51 (Joseph Opekokew).

[82] Canoe Lake Transcript, vol. 1, at 47 (Francis Durocher).

> The way I understand that $25.00, in addition to the other compensation monies that were received, we were supposed to get additional monthly $25.00 cheques until such time that the lands were not being used as an air weapons range.[83]
>
> . . . Theodore Iron

> When they first wanted to give us a possible twenty-year term, at that time they also mentioned that in return we would be compensated annually for loss of livelihood, which I mentioned. After ten years had expired, there would have been another renegotiation for an additional ten years, which never took place.[84]
>
> . . . Gus Coulineur

> This is what we were told that we would get payments as long as the land was used. Twenty years, and if it was going to be needed for more than twenty years, we would get annual payments.[85]
>
> . . . Leon Iron

> I recall that we were promised payments 'till that land was no more in use for training or for whatever in the bombing range. That's all, the only thing that I knew: the promise to be compensated.[86]
>
> . . . Paul Iron

> We were informed that we were going to be getting some cheques, and we should go to Canoe to receive them. They told us at the end of twenty years that the lease would expire and the lands would revert back to its

---

[83] Canoe Lake Transcript, vol. 2, at 232 (Theodore Iron).

[84] Canoe Lake Transcript, vol. 1, at 132 (Gus Coulineur).

[85] Canoe Lake Transcript, vol. 2, at 191 (Leon Iron).

[86] Canoe Lake Transcript, vol. 1, at 78 (Paul Iron).

> traditional use for the people.[87]
>
> . . . Francis Durocher

The figure of $25 per month was not selected at random. The regional supervisor for Indian Affairs advised headquarters that:

> Considerable thought has been given as to how a distribution should be made that would be best for the Indians, that is one that would assist them to derive a livelihood from a smaller area . . . yet not large enough to encourage lack of initiative on their part.[88]

In fact, the sum of $25 per month was roughly equivalent to the prevailing welfare allowance for a small family.[89]

The proposal for compensation was forwarded to Ottawa for approval. It would have the effect of compensating 28 trappers directly displaced by the range, and a further 18 trappers[90] (at the lower scale) whose areas outside the range were now diminished by overcrowding.[91] The plan was approved,[92] and its effect at

---

[87] Canoe Lake Transcript, vol. 1, at 43 (Francis Durocher). This reference appears to be to the first payment for equipment the previous year, and it may be that some of the other references are to the earlier meeting as well.

[88] E.S. Jones to H.R. Conn, 9 March 1956, NA, RG 10, vols, 7334-36, file 1/20-9-5 (ICC, Documents, at 872).

[89] Cold Lake Transcript, vol. VIII, at 973-75 (Stan Knapp).

[90] These numbers are different from those provided as a basis for the original calculation: see text and note 53 above.

[91] J.R. Bell to E.S. Jones, 1 March 1956, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 867).

[92] J.P.B. Ostrander to E.S. Jones, 19 March 1956, NA, RG 10, vol. 7334-36, file 1/20-9-5 (ICC, Documents, at 876).

Canoe Lake, on an annual basis, would have been as follows:

Compensation Plan Based on Annual Payments

No. of Trappers	Total Paid by Month ($)	Voucher Account ($)	Total ($)
28 Displaced	8,400	33,670	42,070
18 Affected	5,400	5,117	10,517
Total			**52,587**

As it turned out, there were no annual transfers from DND into the trust account. There were only the two transfers in 1955 which, apart from the payment for cabins and equipment, did not begin to flow to the Canoe Lake Band until March 1956, 18 months after the range was closed off. The real situation is best understood by looking at the compensation actually available during the period from September 1954, by which time the Band was excluded from the range, to September 1960, when the possibility of a further and final transfer was put before the Band. Prorating the $105,174 actually paid over a six-year period gives the following annual distribution.

Compensation Prorated over Six Years, 1954-60

No. of Trappers	Total Paid by Month ($)	Voucher Account ($)	Total ($)
28 Displaced	8,400	2,983	11,383
18 Affected	5,400	746	6,146
Total			**17,529**

The prorated figures do not represent the actual cash flow to the people at Canoe Lake. But it does show that, during the six-year period when the Band depended on this compensation income to replace the loss of access to their traditional lands in the air weapons range, there would have been only enough money available in each year to maintain the families at the welfare level, as represented by the monthly payments.

During that six-year period, the actual cash flow into and from the overall Primrose Lake Air Weapons Range Trust Account was as follows:[93]

The Trust Account, 1954-60

Fiscal Year	Received by Indian Affairs ($)	Paid Out to Claimants ($)	Balance ($)
1954/55	275,779	39,980	235,799
1955/56	235,799	175,948	295,560
1956/57		242,314	53,336
1957/58		37,094	16,242
1958/59	121	7,416	8,947
1959/60	(no report)		

By 1957 the fund was exhausted. In 1958/59 the money paid out to all Treaty Indians could only have covered monthly payments of $25 for about 25 families, fewer than there were at Canoe Lake alone.

> Shortly after we stopped using the land now occupied by the bombing range, I noticed a significant change in our way of life. We had never depended on government

---

[93] Compiled from the annual reports of the Department of Citizenship and Immigration (ICC, Documents, at 601, 885, 1006, 1152, 1262, 1623, 1661).

> handouts and always had made our own living.
>
> ...
>
> [After the range was established] this area was over-hunted, over-trapped because of the people moving into these small areas. Soon we knew that the land could not sustain us to make a living. From then on it was downward in our incomes and economic means.[94]
>
> . . . Leon Iron

> When I used to hunt and trap in the bombing range area, we used to get a lot of furs and whatever was needed to make money, and I made a lot of money there to feed my family and help myself. Since we have been given money for the bombing range, we never had enough to make ends meet.[95]
>
> . . . Paul Iron

The uncertainty and delay in establishing a basis for full compensation added to the hardship in the community. The moneys standing to individual credits were expended in the expectation of further annual payments that did not appear. By 1958 there was not enough left in the trust account to maintain families at the welfare level, even with their own money.

The Voucher System

Beginning in March 1956, the monthly payments went to most of the families at Canoe Lake. And, at the same time, individuals could expend moneys from their drawing accounts, but not directly. The system put in place was that these funds were held by the Agency Office which, in turn, provided purchase orders or "vouchers" to those who sold goods or equipment to the individuals.[96]

---

[94] Canoe Lake Transcript, vol. 2, at 195-96 (Leon Iron).

[95] Canoe Lake Transcript, vol. 1, at 75 (Paul Iron).

> Yes, I remember purchase orders. During the second payment, I believe I received some money through purchase orders. I was able to buy a team of horses at the time. I didn't see any cash money at all. I only had a piece of paper that I showed to a Mr. Fred Clark in Meadow Lake, and that's how I purchased the horses. It cost me $250 to purchase a team of horses with harness and a wagon.[97]
>
> . . . Jean-Marie Iron
>
> COMMISSIONER BELLEGARDE: Did Mr. Jarvis [Gervais] ever tell you how much money was in your account, how much money you had left for purchase orders?
>
> MR. DUROCHER: No, he never told me anything like that.[98]
>
> . . . Francis Durocher

Community members seemed to encounter little difficulty in expending the funds in their drawing accounts for whatever purposes they wished. Items such as canoes and motors, household appliances, and livestock are noted frequently in the record. Yet, a request by the Chief for a second-hand truck was refused.[99]

---

[96] J.R. Bell to Indian Affairs Branch, 29 Februaury 1956, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 863-64).

[97] Canoe Lake Transcript, vol. 2, at 244 (Jean-Marie Iron).

[98] Canoe Lake Transcript, vol. 1, at 48 (Francis Durocher).

[99] Letters from K.J. Gavigan to E.S. Jones, 15 April 1957, and from Jones to H.R. Conn, 18 April 1957; both NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 1019, 1020).

The Diminishing Compensation Fund

The combination of monthly payments and expenditures from the drawing accounts quickly depleted the compensation fund. On July 2, 1957, K.J. Gavigan, the local agent, reported on discussions with the Band at treaty time.

> At the recent [Treaty] Annuity payment at Canoe Lake, the Indians were somewhat puzzled at the turn of events and they asked for some explanation . . . [T]he item which troubled them most was the cessation of the cash monthly payments of $25.00. If the Indians are to be given a portion of the balance outstanding, it is recommended that consideration be made to continue the monthly payment of $25.00.[100]

This letter was acknowledged at headquarters on July 19, "pending clarification of policy on this question. You will be further advised as soon as a decision has been reached."[101] While this was pending, the Chief pressed for further payment.

> Chief John Iron told me on one of my visits to Canoe Lake this summer that if they were not going to receive any more compensation money, that his people wanted their land back and that he was going to hire a lawyer to look after this for him. I have made inquiries to try and ascertain who his lawyer would be, but I have not been able to find out, so I doubt if he has retained legal counsel as yet.
>
> I would ask that this request to continue the

---

[100] K.J. Gavigan to E.S. Jones, 2 July 1957, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 1049).

[101] J.H. Gordon to E.S. Jones, 18 July 1957, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 1052).

> compensation money, receive very sympathetic consideration *as the income of this Band is very limited.*
>
> . . .
>
> The majority of these people made good use of their compensation money, buying furniture, washing machines, canoes, motors, etc.[102]

The July and October correspondence was answered from headquarters on November 12, 1957. At that time, the information in Ottawa about local expenditures was at least six months out of date, but further payments to the Band were authorized. "Mr. Gavigan may be advised to continue compensation payments to the amount of the credit remaining to individual members and *to the Band as a whole*."[103] By May 1958 Gavigan reported that, at Canoe Lake, the "majority have practically exhausted their 1957 payment."[104] There was no transfer of funds from DND in 1957.

At this point, the fund was nearly exhausted.

> Replying to your letter of May 8, 1958, *there is no indication that further payment will be received from the Department of National Defence.*
>
> The only credit the Canoe Lake Band has for compensation received to date is as indicated by the Meadow Lake Agency records.[105]

---

[102] K.J. Gavigan to E.S. Jones, 29 October 1957, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 1081). Emphasis added.

[103] J.H. Gordon to E.S. Jones, 12 November 1957, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 1086-87). Emphasis added.

[104] K.J. Gavigan to E.S. Jones, 2 May 1958, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 1157).

[105] J.H. Gordon to E.S. Jones, 15 May 1958, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 1158). Emphasis added.

The hardship in the community due to uncertainty and delay has already been noted. Now that three years had passed since the initial flow of compensation from DND, and now that the money was gone, Indian Affairs renewed its efforts to finalize the settlement for Treaty Indians.

Negotiating a Final Payment within Government

The likelihood of further compensation from DND was fading. By 1957 DND had become frustrated at the length of time it was taking to settle all claims, including those of Treaty Indians, and developed its own proposal. That proposal took the position that compensation as between Métis and Indians ought to be "more or less equal" since the distinction between the two groups appeared to the DND to be an artificial one "not necessarily noticeable in the field." Furthermore, the Métis in northern Saskatchewan were unsatisfied with the negotiated compensation and "refused to accept their cheques, contending that by comparison [with Indian compensation] they are much too low."[106] To resolve the "stalemate," it was recommended:

> 1. That the settlements with the Metis be doubled, making the average compensation approximately $750.00 each, payable in two equal payments . . .
> 2. T*hat the Indian Affairs Branch be prevailed upon to take a realistic view of the situation and agree to complete settlement of compensation accepting as total payment the $511,598.00 already paid.*
>
> The adoption of this suggestion will show some advantage to the Treaty Indians over the Metis, but not to such an extent as to cause undue difficulties.

---

[106] F.D. Millar to C.F. Johns, National Defence, 5 February 1957 (ICC, Documents, at 973-75). Emphasis added.

> 3. *That any funds deemed necessary for the carrying out of welfare work or experimental rehabilitation plans for the Treaty Indians be provided by special vote of Parliament quite divorced from the activities of DND.*[107]

The above memorandum noted that moneys had already been advanced to the Indian Affairs Branch "as a partial payment to the Treaty Indians," but this did not affect the recommendation that no further compensation be paid. This proposal was not communicated to Indian Affairs. Instead, for the first time, the basis of Indian Affairs' valuation of compensation under the MacKay proposal was questioned.

When the Director of the Indian Affairs Branch, H.M. Jones, became aware of this challenge, he prepared a full report for his Deputy Minister. His memorandum sets out a detailed basis for the original calculations for the loss to Indians of game and fish resources. It estimates that a competent hunter with nine dependant children could "easily" obtain 3658.5 lbs of meat and fowl, plus 2400 lbs of fish, annually having a total value of $2000.[108]

As a possible compromise of the original calculation, the Director suggested that the MacKay proposal be revised to provide four years' compensation for Beaver Lake, Heart Lake, and Goodfish Lake (instead of five years'), and eight years' compensation for Cold Lake and Canoe Lake (instead of 10 years). This would anticipate a final settlement with the DND for a further payment of $1,360,846. The Director further suggested an alternative means of payment:

---

[107] See note 106.

[108] H.M. Jones to Laval Fortier, 3 April 1957, NA, RG 10, vol. 7335, file 1/20-9-5 (ICC, Documents, at 1009-15).

> Consideration might be given, as a means of resolving the embarrassment of the Department of National Defence in dealing with compensation claims by Metis and non-Indians, to providing *a lump sum grant to be administered by the Department of Citizenship and Immigration for the use and benefit, and to assist in the rehabilitation of Indians* who have lost hunting, trapping and fishing income by reason of the establishment of the Primrose Lake Air Weapons Range.[109]

The Deputy Minister of Citizenship and Immigration responded to this proposal as follows:

> I am informed that the fact that payments have been made to our Department in the past has created some difficulty for the Department of National Defence in coming to an agreement with non-Indians. Therefore, *it has been decided that no further consideration would be given to the claims of Indians, and that no further payments would be made until settlement has been reached on the claims of non-Indians.*[110]

During this further period of indulgence granted to DND, which was to last more than a year, that department did proceed to secure Treasury Board and Cabinet approval for a more generous settlement with 112 Métis, totalling $92,500, which was estimated to provide average individual payments of $850.[111] The issue of compensation to Treaty Indians was not brought forward again until August 1958. A memorandum to Fortier notes:

---

[109] H.M. Jones to Laval Fortier, note 108, at 1012. Emphasis added. This wording was suggested by the legal adviser in memo from D.H. Christie to H.M. Jones, 26 March 1957, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 1000).

[110] Laval Fortier to H.M. Jones, 12 April 1957, NA, RG 10, vol. 7336, file 1/20-9-5 (ICC, Documents, at 1018). Emphasis added.

> You will recall that negotiations were broken off with the Department of National Defence in order not to cause embarrassment in their dealings with non-Indian groups.
>
> I would be pleased, if you wish, to prepare the necessary submission to the Department of National Defence.[112]

A memorandum from the Indian agent for Canoe Lake that same month asks about further compensation. "[T]hese people are hard up at the present time and really need this money."[113] The issue was also brought up in the House of Commons by the former Minister of Citizenship and Immigration, Mr. Pickersgill, by way of a question to his successor, Mrs. Fairclough.

> I am afraid it was a terrible mess that I left her to settle, because the Minister of National Defence was not showing the generosity towards the Indians which I though he should show and we never were able to reach a settlement.[114]

---

[111] F.R. Miller to Governor General in Council, 22 May 1957, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 1035); Treasury Board to Department of National Defence, 27 May 1957, NA, RG 2, vol. 1943, series 1 (ICC, Document at 1038).

[112] H.M. Jones to Laval Fortier, 8 August 1958, NA, RG 10, vol. 7336, file 1/20-9-5 (ICC, Documents, at 1175).

[113] K.J. Gavigan to E.S. Jones, 13 August 1958, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 1176).

[114] House of Commons, *Debates* (28 August 1958) at 4255 (copy in ICC, Documents, at 1179).

The actual question posed at that time was whether the Minister agreed with the general proposition that her Department would seek compensation whenever injury was done to "an Indian trap line or an Indian's trapping rights." She did agree.

In September 1958, DND fired the opening salvo in what would become a lengthy battle for additional compensation.

> As you may be aware, this department finds it most difficult to regard, as fair and reasonable compensation, the figure of $2,331,044.98 computed by your department with respect to these Treaty Indians and I can find no record of the formal acceptance of this sum as the basis of a final settlement in the matter. *While we are prepared to recognize, within reasonable limits, the special position of Treaty Indians as Wards of the Crown*, it is the opinion here that payments to the Treaty Indians or to your department on their behalf, should be more in line with the compensation payments made to the Metis and white residents of the area for the loss of similar rights.
>
> . . .
>
> To date, two payments totalling $511,598.00 have been made to your department on behalf of the five Indian Bands. This sum is the equivalent of $978 for each man, woman and child, or *approximately $3,900 for each income-earning male*[115] . . . [These amounts] are in excess of the average settlement of compensation made with the Metis and white residents who had similar interests in the area.
>
> In the circumstances, *I would ask that you*

---

[115] This calculation is excessive in the case of Canoe Lake, where 46 trappers and fishermen shared $110,000 in compensation, including compensation for cabins and equipment. This amount would average $2400 each.

> *give serious consideration to the acceptance of the sum of $511,598.00 previously paid as the full and final settlement* of compensation to the Treaty Indians who have been affected by our Range operations.[116]

Citizenship and Immigration responded to this request by preparing a submission to Cabinet on the issue,[117] but it was referred back to Treasury Board,[118] where officials sided with DND.[119] On January 5, 1959 the Chairman reported to Cabinet the Board's recommendation that no further compensation be paid and that "any further assistance to the Indians should be considered on its merits . . . and provided for out of the appropriations of the Department of Citizenship and Immigration."[120]

While this was going on, Chief and Council wrote to the Minister, saying that no annual payments had been received,

> although *we have been told the payments were to come every year for ten years or even more* as long as they hold our trapping ground for Air Weapons purposes.
>
> . . .

---

[116] F.R. Miller, Deputy Minister, National Defence, to Laval Fortier, 30 September 1958, NA, RG 10, vol. 7336, file 1/20-9-5 (ICC, Documents, at 1197-98). Emphasis added.

[117] Memorandum to Cabinet, 26 November 1958, NA, RG 10, vol. 7336, file 1/20-9-5 (ICC, Documents, at 1212.1).

[118] W.E.D. Halliday, Privy Council Office, to Laval Fortier, 22 January 1959, NA, RG 10, vol. 7336, file 1/20-9-5 (ICC, Documents, at 1233).

[119] J.A. MacDonald to Minister of Finance, 24 December 1958, NA, RG 55, file 904 (ICC, Documents, at 1224).

[120] The Hon. Donald M. Fleming, Minister of Finance, to Cabinet, 5 January 1959, NA, RG 55, file 904 (ICC, Documents, at 1231).

> May we let you know that the money sent to our Band of Canoe Lake has not been foolishly spent but used to build new houses or to buy equipment needed in the North as canoes or outboard motors, etc. And if we are not to expect any more compensation although promised to us we are asking you, Honourable Minister, to *re-open this area of ours for trapping and fishing purposes, the only way for us to get a living in this country* if we are left without compensation at all.[121]

The Minister's response was to say that the "question of further payments to your band is still under negotiation with the Department of National Defence."[122] The Minister had decided to resubmit the issue to Cabinet based on a more detailed memorandum setting out her department's analysis of the issue.[123] Again, the matter was referred back to Treasury Board for resolution.[124] A year later, it remained unresolved.[125] In May 1960 the Minister again wrote to Chief John Iron stating that the issue of compensation was still under active consideration.[126]

To prepare for further discussions with Treasury Board, Colonel Fortier, the

---

[121] Chief John Iron to the Hon. E. Fairclough, Minister of Citizenship and Immigration, 8 January 1959, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 1232). Emphasis added.

[122] The Hon. E. Fairclough to Chief John Iron, 25 January 1959, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 1235).

[123] The Hon. E. Fairclough to Cabinet, 25 February 1959, NA, RG 10, vol. 7336, file 1/20-9-5 (ICC, Documents, at 1246).

[124] Record of Cabinet Decision, 17 April 1959 (ICC, Documents, at 1265.1).

[125] See, for example, D.J. Harris to H.A. Davis, 5 April 1960, NA, RG 55, file 904 (ICC, Documents at 1328).

[126] E. Fairclough to Chief John Iron, 11 May 1960, NA, RG 10, vols. 7334-36 (ICC, Documents, at 1356).

Deputy Minister, met with senior officials of the Indian Affairs Branch and posed four questions to them:

> 1. Did or did not the Indians on whose behalf compensation was claimed enjoy an exclusive right, under provincial license, either through individual traplines in Alberta or in group areas in Saskatchewan, to trap in the Primrose Lake area?
>
> The answer to this question was, in the opinion of the departmental officers present, clearly in the affirmative.
>
> 2. Did or did not some of the Indians on whose behalf compensation is claimed, as recorded in the detailed lists, enjoy under provincial license the right to fish commercially in this area?
>
> Again an affirmative answer was given.
>
> 3. Did or did not the Indians prior to the creation of this bombing range have a legally enforceable right to hunt and fish for food in this area?
>
> The answer to this question was again in the affirmative by virtue of Section 12 of the Natural Resources Transfer Agreement Acts as defined by Appeal Court decisions in both Provinces.
>
> 4. Col. Fortier then posed the question whether, since the creation of the range, any of the rights enumerated above are now enjoyed by the Indians involved in this claim?
>
> The answer to this question was clearly in the negative.[127]

Treasury Board isolated three aspects of the claim advanced by Citizenship and Immigration:

---

[127] Indian Affairs Branch Memo to File, 30 September 1959, NA, RG 10, vol. 7336, file 1/20-9-5 (ICC, Documents, at 1288-89).

- whether the Indians had a legally enforceable claim;
- whether the figures provided by Citizenship and Immigration were justifiable; and
- whether the need for economic rehabilitation should be considered as part of an appropriate amount for compensation.

On the first issue, legally enforceable claims, the Deputy Attorney General advised that the Indians' rights were limited to hunting, fishing, and trapping for food all seasons of the year on unoccupied Crown lands, as provided in section 12 of the relevant Natural Resources Transfer Agreements.[128] When the lands became occupied by the air weapons range, these protected rights "ceased to operate." There was, in his opinion, "no legal right to compensation."[129] There was no reference to the treaties in this opinion.

Indian Affairs continued to argue, however, that the claim was at least a "strong, equitable one."[130] Whether or not the Indians could sue the Crown, their "unrestricted right to hunt, fish and trap for food throughout the area" had been "completely abrogated."[131] Adequate reparations were needed because "the Federal Government has completely disrupted their way of life and forced the adoption of new vocations for which they were not prepared."[132]

---

[128] *Constitution Act, 1930*. See discussion at pp. 203-07 below.

[129] Deputy Attorney General to G.G.E. Steele, Treasury Board, 2 February 1960, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 1317-18).

[130] See, for example, Laval Fortier to D.H. Watters, Treasury Board, 20 July 1959, NA, RG 10, vols. 7336-38, file 1/20-9-5 (ICC, Documents, at 1278-79).

[131] H.M. Jones to J.L. Fry, Treasury Board, 19 October 1959, NA, RG 55, file 904 (ICC, Documents, at 1295).

On the second issue, the calculation of the loss to Indians, Treasury Board eventually agreed that Indian Affairs' calculation of the annual loss of fish and game used for food and other domestic purposes was reasonable. In addition, "[t]he figures for furs, fish and game sold are matters of record and therefore need not be questioned."[133]

It was the third issue, economic rehabilitation contrasted with compensation, which was the real source of dispute between DND and Indian Affairs. DND wanted to accomplish two things: treatment of the economic loss in a manner similar to loss of business opportunity, and parity among the whites, Métis, and Indians who were compensated for their dislocation from the range.[134] Quite simply, DND did not want a compensation package for Indians which would reopen the other negotiations or cause resentment among the other groups.[135]

Indian Affairs, on the other hand, saw the interim payments as direct compensation for loss of income and food resources which could not be replaced.[136] While some of this compensation could have been available for economic rehabilitation, that was a larger issue which had not been factored into the original calculation of annual losses.[137] Even so, the fact that such a program was necessary was directly attributable to the dislocation of Treaty Indians from the range and should, in the view of the department, have been a proper charge against the DND budget.

---

[132] H.M. Jones to G.F. Davidson, Deputy Minister, Citizenship and Immigration, 8 April 1960, NA, RG 10, vol. 7336, file 1/20-9-5 (ICC, Documents, at 1333).

[133] H. Hodder to G.G.E. Steele, Treasury Board, 1 June 1960, NA, RG 55, file 904 (ICC, Documents, at 1362-63).

[134] See, for example, R.G. MacNeill, Treasury Board, to Minister of Finance, 10 December 1958, NA, RG 55, file 904 (ICC, Documents, at 1215).

[135] F.D. Millar to C.F. Johns, National Defence, 8 February 1957 (ICC, Documents, at 973-74).

[136] Indian Affairs Branch Memo to File, 30 September 1959, NA, RG 10, vol. 7336, file 1/20-9-5 (ICC, Documents, at 1286-87).

> [Citizenship and Immigration] pointed out . . . that DND had, without any significant notice, taken from the Indians at one swipe rights which they would otherwise have only lost over a period of years.[138]

Treasury Board remained sympathetic to the DND point of view. At length, it was agreed that DND would make one further payment -- equivalent to one year's compensation or $235,799 -- and leave the issue of long-term economic rehabilitation to Indian Affairs for resolution.[139]

Negotiating a Final Payment with the Indians

By July 1960 the only question within government was whether the Indians would settle for one more payment. Treasury Board wrote to the Deputy Minister of Citizenship and Immigration:

> As this matter was originally referred to the Treasury Board by Cabinet, we now intend to re-submit the case to the Board suggesting that the proposed settlement agreed

---

[137] J.P.B. Ostrander to H.M. Jones, 4 March 1952, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 336).

[138] D.J. Hartt to D.W. Franklin, Treasury Board, 14 April 1960, NA, RG 5, file 904 (ICC, Documents, at 1338).

[139] H.A. Davis to J.A. MacDonald, Treasury Board, 18 July 1960, NA, RG 55, file 904 (ICC, Documents, at 1377).

> to by the Department of National Defence be recommended to Cabinet for approval. However, before we do this *it would be desirable to know whether or not your Department feels reasonably sure that one more payment of $235,000 as compensation will be acceptable to the Indians* so that they will agree to sign a release to the land.
>
> I should also point out at this time that we feel that *any further aid for these Indians should be an integral part of your Department's regular program of rehabilitation.*[140]

When the Minister, the Honourable Ellen Fairclough, was advised of this plan, she noted on the memorandum:

> It seems to me the Indians have had a raw deal on this matter and we should look after their interests.[141]

Her department set about organizing meetings with the Bands to put this settlement proposal to them. There was, however, concern that a plan for economic rehabilitation should be presented at the same time and included in the Citizenship and Immigration estimates for the 1961-62 budget.[142] The department deferred the subject on the basis that the Indians should be involved in such planning and that it would take considerable time before this could be done.[143]

---

[140] G.G.E. Steele to G.F. Davidson, 22 July 1960, NA, RG 10, vol. 7336, file 1/20-9-5 (ICC, Documents, at 1380). Emphasis added.

[141] G.F. Davidson to the Hon. E. Fairclough, 29 July 1960, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 1384).

[142] H.M. Jones to G.F. Davidson, 18 August 1969, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 1400).

Colonel Jones wrote to the regional supervisor in Saskatchewan, N.J. McLeod, instructing him to organize a meeting at Canoe Lake.

> I would like you to arrange meetings with the Indians of the Canoe Lake Band, to ascertain if they are prepared to accept this proposal. *If they are agreeable, will you please endeavour to obtain written releases from them to that effect.* These releases will be required before we will be in a position to proceed with a submission to the Treasury Board to secure authority for the payment.
>
> If the Indians will not accept this proposal by National Defence, there appears to be little or no hope that the proposed payment or any further compensation payments could be obtained from National Defence.
>
> It has been made clear to us that, in the view of Treasury Board, *any additional assistance to the Indians of this area (beyond the proposed payment of $235,000) should be a part of the regular governmental programs of welfare assistance and economic development, which would be met from the appropriations of this Department.* This matter of further expenditures for the rehabilitation of the Indians is for your own information.[144]

The meeting at Canoe Lake was held September 14, 1960.

> Several members of the Band were away working on road construction and were unable to attend. Of the 28 members of the Canoe Lake Band who were displaced by the Weapons Range, 16 were present, and 6 members of the Band who were indirectly displaced were also present.

---

[143] H.M. Jones to G.F. Davidson, 26 August 1960, NA, RG 10, vol. 7336, file 1/20-9-5 (ICC, Documents, at 1402).

[144] H.M. Jones to N.J. McLeod, 25 August 1960, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 1405). Emphasis added.

> The meeting, therefore, was considered representative of the members of the Canoe Lake Band who are directly concerned . . .
>
> Through an interpreter a thorough explanation was given to the Indians. The meeting was advised that the Department of National Defence were considering a third and final payment in an amount of $235,000 to be divided amongst the Indians of the Canoe Lake, Cold Lake, Goodfish Lake, Beaver Lake, and Heart Lake Bands, provided that the Indians of these bands would agree to accept this amount as a final payment of compensation. Considerable discussion was noted amongst the Indians, conducted in their native tongue, and *finally they advised me that they were in agreement and would accept the proposal of the Department of National Defence as final payment and that no further claims would be presented by them in the future.*
>
> . . . The Canoe Lake Band understand and will seek assurance that when the Department of National Defence terminates the use of the Primrose Lake Weapons Range that *the area formerly used by their members for hunting, trapping, and fishing will be returned to them.*[145]

Attached to this report was a Band Council Resolution passed at the meeting. It stated the following:

> We have today been informed by Indian Affairs officials that the final settlement payment will be in the amount of two hundred and thirty-five thousand dollars ($235,000.00). We agree to accept our share on behalf of the members of our band as a final and complete settlement. We agree that the amount specified is a fair

---

[145] N.J. McLeod to H.M. Jones, 20 September 1960, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 1424-25). Emphasis added.

> and reasonable payment and we assure Indian Affairs Branch that the individual members of our Band will sign a release and quit claim.[146]

Also attached to the report was a form signed by 23 individuals who attended the meeting, accepting "a third and final full settlement to any claim or claims we have now or may have in the future for compensation for loss of hunting, trapping and fishing, and other uses of the land now constituted in the Primrose Lake Air Weapons Range."[147] There was some discussion before this Commission about the wording of this document and the signatures appended to it,[148] but nothing in our findings turns on these points and government does not rely on the Resolution or the form.

The Intent of the Final Payment

As the paperwork was being prepared to obtain Cabinet approval of the plan, one Indian Affairs official noted that the intent was to obtain a release from the Indians in favour only of the Department of National Defence. "Nowhere in the correspondence is there any suggestion that the Minister [of Citizenship and Immigration] had or would agree to accept such payment as being in full and final settlement of the Indian claim . . . [A] formal release would have to be executed by each individual Indian before the Department of National Defence was absolved of their responsibility in the question."[149]

---

[146] Canoe Lake Band Council Resolution, 14 September 1960, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 1413).

[147] Canoe Lake Indian Band to Government of Canada, 14 September 1960, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 1414-15).

[148] See, for example, Canoe Lake Transcript, vol. 2, at 167 (Leon Iron), noting that Mr. Iron's signature was affixed by his mark. The document referred to is Exhibit 1, in Exhibit Book, at Tab "O". A letter in Mr. Iron's own hand is included in ICC, Documents, at 1692-93.

DND acknowledged this concern by saying, "we had hoped [this] would serve as a release of this department by your department." The letter goes on to add that if Indian Affairs officials "consider that some form of final release [from the Indians] is necessary, and this may well be the case, you could of course do so."[150] On the advice of its own legal adviser, Indian Affairs abandoned the idea of a formal release of rights. It substituted, however, a "form of receipt being acknowledgment by the Indian that he has received a Dominion of Canada cheque in full and final settlement of his claim."[151] This "receipt" would later be interpreted as releasing all departments of government from all further financial obligations.

The actual Treasury Board submission, signed by the Ministers of Citizenship and Immigration and National Defence, confirms that the final payment was intended to absolve only DND from further responsibility, acknowledging the role of Indian Affairs as having acted on behalf of the Indians in the matter.

> [I]t has been agreed that a final settlement of the claim on the basis of three years income would be a satisfactory solution of the compensation issue *and would leave any consideration of long term rehabilitation as a separate issue which would not concern the Department of*

---

[149] R.F. Battle to H.M. Jones, 3 November 1960, NA, RG 10, vol. 7336, file 1/20-9-5 (ICC, Documents, at 1457).

[150] E.B. Armstrong, National Defence, to G.F. Davidson, 4 November 1960, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 1462-63).

[151] R.F. Battle to H.M. Jones, 18 November 1960, NA, RG 10, vol. 7336, file 1/20-9-5 (ICC, Documents, at 1479).

> *National Defence.*
>
> . . .
>
> The undersigned therefore have the honour to recommend that authority be granted for a further payment by the Department of National Defence to the Indian Affairs Branch of the Department of Citizenship and Immigration of *$235,799 such payment to be accepted by Citizenship and Immigration in trust on behalf of the Treaty Indians in the Primrose Lake area and as being in full and final settlement of all claims made on behalf of the Treaty Indians* with respect to loss of income and all other claims of any nature that have been made or may be made on behalf of the Treaty Indian Bands *by the Department of Citizenship and Immigration* arising from the taking over by the Department of National Defence of the lands known as the Primrose Lake Air Weapons Range.[152]

The proposal supporting Treasury Board Minute 573254, dated December 2, 1960, includes the above wording, with a marginal note added: "This settles DND involvement once and for all."[153] The formal minute, as approved by Cabinet, is only one paragraph long and adopts the wording that payment is settlement on behalf of any claims that may be made by Citizenship and Immigration "on behalf of the Treaty Indian Bands."[154]

---

[152] The Hon. E. Fairclough to Treasury Board, 25 November 1960, NA, RG 2 (ICC, Documents at 1484). Emphasis added.

[153] D.J. Hartt to H.A. Davis, Treasury Board, 2 December 1960, NA, RG 10, vol. 7336, file 1/20-9-5 (ICC, Documents, at 1506-07).

[154] TB Minute, 29 December 1960, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 1521). An earlier version of this minute stated that payment would be made to Citizenship and Immigration "to be held in trust for the Treaty Indians": ICC, Documents, at 1520. The quoted words were subsequently deleted.

We conclude that the intent of this accommodation between the two government departments was to relieve the Department of National Defence, and not the Government of Canada generally, from any further responsibility to compensate Treaty Indians dislodged or affected by the Primrose Lake Air Weapons Range.

Delivering the Final Payment

The cheques for payment to the 28 members of Canoe Lake actually displaced from the range were forwarded to Regina on January 12, 1961 together with a supply of "receipt forms." The following instructions were given:

> When the cheques are issued to these individuals or as soon as possible thereafter, each person should be interviewed to determine how he proposes to become better established or, where necessary, re-established and how he intends to use the funds further to this end. In this connection, the Department's function is that of the counsellor and advisor but the following points should be made very clear:
>
> 1. As citizens and as members of the community, it is essential that the Indians establish and improve their credit ratings. Consequently they should take immediate steps to pay their debts from the funds now available to them.
> 2. The payments they receive will, of course, be taken into consideration when examining applications for relief assistance during subsequent months. Those receiving substantial payments should not require assistance at least for the remainder of the current winter unless the funds are used for payment of debts or for some constructive purposes such as the purchase of building materials, farming equipment, etc.

> *3. The manner in which they utilize these funds and the proportion they devote to a personal rehabilitation program will be closely watched and will have an important bearing on their eligibility for future assistance under regular programs of the Department related to agriculture, ranching, placement, and other economic development projects.*[155]

The regional supervisor in Regina, N.J. McLeod, requested additional payment on behalf of the Band at large -- $10,577 -- which was the Canoe Lake Band's share of the $235,000 received from the DND.[156] These funds had not been received when the first batch of cheques was distributed at Canoe Lake on January 23, 1961.

> The distribution was made to 27[157] members of the Canoe Lake Band. It was noted, however, that the Indians receiving payment shared with their sons and other relatives. *This would indicate that practically every member of the Canoe Lake Band received a portion of the payment.* I also noticed that the Indians concerned settled all outstanding debts with local dealers with whom they had dealings . . . The Indians of the Canoe Lake Band are fairly well to do, as they have reasonably good trapping areas and also earn a substantial income from commercial fishing operations Canoe and Keeley Lakes. There is very little destitution amongst them and

---

[155] R.F. Davey to N.J. McLeod, 12 January 1961, NA, RG 10, vol. 7336, file 1/20-9-5 (ICC, Documents, at 1559-60). Emphasis added.

[156] N.J. McLeod to H.M. Jones, 23 January 1961, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 1566).

[157] One cheque was returned for estate administration as the payee had died: W.J. Harvey to L.C. Hunter, 25 January 1961, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 1570).

> assistance from our Branch is limited to physically handicapped Indians.
>
> I again impressed upon the Indians the fact that they would have no claim for further compensation at any time in the future. All of the Indians entitled to payment signed the enclosed agreements, fully aware that they were relinquishing all claims for any future compensation. The agreements were signed without any disagreement or arguments on the part of the Indians, as they had been made aware at previous meetings that this would be final payment of compensation in connection with the Primrose Lake Air Weapons Range.[158]

The form of receipt or "agreement" signed by each recipient is set out on page 66.[159] This document is frequently referred to as a release or quit-claim.

This Commission was told by witnesses that the distribution meeting at Canoe Lake was not without disagreement.

> I was asked to do the interpreting for this hearing. When the significance of the quit claims was being discussed, one official actually stated that we would not receive anything if we did not cooperate. It was at this point that I refused to do any more interpreting and walked out.
>
> Mr. Jarvis [Gervais] then took over the interpreting duties. Even though the people did not fully understand the quit claims, they decided to sign. They were afraid.[160]
>
> . . .
>
> MR. IRON: . . . At that point, you know, when things got pretty hot, that's when I just stopped interpreting.

---

[158] N.J. McLeod to H.M. Jones, 1 February 1961, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 1575-76). Emphasis added.

[159] See, for example, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 1573).

[160] Canoe Lake Transcript, vol. 2, at 153 (Leon Iron).

INTERVIEW SHEET
REGARDING COMPENSATION ARISING FROM THE ESTABLISHMENT OF THE PRIMROSE LAKE AIR WEAPONS RANGE

__________ _____, 19__
Place Date

I ________________ No. ____ of the ______________ Band, acknowledge receipt of Dominion of Canada cheque no. ____ dated _______, 19__ in the amount of ______, being in full and final settlement of my claim for compensation arising from the establishment of the Primrose Lake Air Weapons Range.

____
Signature

____
Witness

____
Witness

....

Age ___

M/S ___

Dependents _____

Debts

Personal History (General information, work history, attitude, character, welfare assistance, etc.)

Remarks (Plans; how will money be spent? Counsel or advice re money matters; is he banking his cheque?)

____
Interviewer

> Mr. Henderson: What had you been interpreting; what message had you giving the people by way of translation up to that point?
>
> Mr. Iron: They were trying to explain to us that the money that was coming was the final payment. But I don't think I finished at that time. I was not there when the significance of the quit claims was being discussed, because right away, when I read what was in that quit claim, I began to feel that something was not right. That's when I started to feel uneasy and didn't want to do any more services for those people.
>
> Mr. Henderson: Did you say something to them at that time? Did you stop interpreting and say, "I don't think this is right?"
>
> Mr. Iron: Yes, I said, "I'm not interpreting any more. You take over," I said to the assistant agent. That was Mr. [Gervais].[161]
>
> . . .
>
> Mr. Henderson: Now, based on the interpretation that you had done up to that point, had you told people that this was a final payment and that there would never be any more compensation?
>
> Mr. Iron: I guess I was pretty vague when I explained that to them at that time. I just told them that they should not sign these quit claims; that this meant that we would not get any more payments. That's all I said to the chief there, that we should not sign.[162]
>
> . . .
>
> Most of the people still did not believe that the third payment would be the last payment. Many of them had

---

[161] Canoe Lake Transcript, vol. 2, at 164-65 (Leon Iron).

[162] Canoe Lake Transcript, vol. 2, at 169 (Leon Iron).

> a notion that a quit claim was simply a receipt for the cheque.[163] The fact is that everyone was so poor that when they started checking, desperation took over. I read the contents of the release we were supposed to sign so that we could receive our cheques, and I'll never forget the fear I felt that day.[164]
>
> . . . Leon Iron

Other members of the community confirmed that the immediate payment of money was the major factor that led them to accept the cheques, which ranged in amounts from $495 to $2525.[165]

> I signed those papers because a $500 cheque was sitting in front of me there, and I needed that money. Times were hard at that time. It was around $500 or so. It was less than $600 anyway. That's the reason why I signed those documents, because the money was there already. I needed the money and the cheque was there, available and ready for me.[166]
>
> . . . Eli Iron

> [E]verybody jumped on that -- the money. If we had understood what was at that time, what was asked of us, things would have been different -- a lot different than they are today, I guess.[167]
>
> . . . Joseph Opekokew

---

[163] See also Canoe Lake Transcript, vol. 1, at 53 (Joseph Opekokew).

[164] Canoe Lake Transcript, vol. 2, at 152 (Leon Iron).

[165] List of Cheques, 9 January 1961, NA, RG 10, vol. 7336, file 1/20-9-5 (ICC, Documents, at 1548-50).

[166] Canoe Lake Transcript, vol. 1, at 117 (Eli Iron).

[167] Canoe Lake Transcript, vol. 1, at 54 (Joe Opekokew).

We find that, given the length of time that had passed since the interim payments had elapsed, and the need for more funds, which was apparent to all concerned, there was practical compulsion to sign the quit-claims. The legal consequences of this finding will be discussed later.

On February 2, 1961, Minister Fairclough wrote to Chief John Iron confirming final payment from DND.[168] On March 1, Chief Iron responded that the issue of general Band compensation remained outstanding. The 18 individuals who had previously been compensated because of the indirect effects of the range had not been included in the January 23 distribution.[169] These cheques, in amounts of $584 or $585, were distributed at the beginning of April 1961, and receipts were obtained from the payees.[170]

Interest on the Compensation Account

In the annual report for fiscal year 1960-61, which ended March 31, 1961, Citizenship and Immigration reported that the Primrose Lake trust account had received $235,941.95 and that $238,760.80 had been expended.[171] There is no indication of the previous balance or explanation of the shortfall of $2818.49, which was apparently unfunded. It appears, however, that the shortfall was made up from accumulated interest of $34,755.23, which had accrued at the rate of 5 per cent annually from the time of the first DND payment. The balance in the account after the last distribution had been made was only $32,464.74.

---

[168] The Hon. E. Fairclough to Chief John Iron, 2 February 1961, NA, RG 10, vols. 7334-36 (ICC, Documents, at 1577).

[169] Chief John Iron to The Hon. E. Fairclough, 1 March 1961, DIAND, vols. 9-11, file 1/20-9-5 (ICC, Documents, at 1622).

[170] N.J. McLeod to R.F. Battle, 21 April 1961 (ICC, Documents, at 1635). The receipts are the short form of receipt, some of them handwritten, and not the full interview sheet as set out at 66.

[171] Statement of Receipts and Disbursements, 31 March 1961, NA, RG 10, vol. 6341, file 736-1 (ICC, Documents, at 1626).

On June 21, 1961, the treasury officer of the department advised that this interest had been credited to the trust account, but that there had been no statutory authorization for the payment of interest.

> Therefore interest should not have been allowed and should be returned to the credit of the Receiver General unless the necessary authority of the Governor-in-Council is obtained.[172]

No effort was made to obtain authorization to retain these funds. There was some discussion before the Commission as to whether a claim for these funds was a matter included in the original 1975 claim submission. Ultimately, it was agreed by counsel that, if these claims are accepted for negotiation, the interest issue would be dealt with as part of compensation negotiations.[173] For that reason only, we will not make any comment on the failure to secure, or retain, interest on the trust account.

Claims for Further Compensation

Once the trust account was effectively closed,[174] the matter of further compensation to treaty Indians was, from the government's point of view, laid to rest. The need for economic rehabilitation remained, but that would no longer be dealt with as a compensation issue, or even as a matter for special appropriation within the budget of the Indian Affairs Branch.[175] The hardship in the community, which was acknowledged by government, was to be dealt with as a welfare issue.[176] As one witness put it:

---

[172] J.P. Caron, Indian Affairs, to H.M. Jones, 21 June 1962, NA, RG 10, vol. 6341, file 736-1 (ICC, Documents, at 1676).

[173] Transcript of Argument, at 408-11. Counsel for Canoe Lake were not present at that point in the proceedings.

[174] The annual report for 1961/62 shows a balance remaining of $20.78.

> The biggest blow, however, came when government brought in welfare, after we received our final compensation payments. That is when I saw the most dramatic change in the lives of the Canoe Lake people. Their initiative was killed. We all used to make our own living from the land which was taken away. One of the reasons we miss that land so much is because it was so rich in resources . . .
>
> . . .
>
> I will never forget how embarrassed I was when I first received welfare -- $15.00 a month. I was ashamed. I was used to earning my own living, not receiving welfare.[177]
>
> . . . Leon Iron

The Department of National Defence, however it may have resolved the issue with Treaty Indians, was not finished paying compensation. Having once increased the proposed payment to Métis claimants -- and securing full releases from them in return -- the department proceeded to do so again. The rationale was that the Métis had been paid much less than the Treaty Indians and the non-aboriginal claimants. Authorization was given to make a further payment to 110 Métis claimants of a total of $107,800, which would bring their average compensation to $1604. This would equal the average payment to non-aboriginal people.[178]

---

[175] An internal Treasury Board memorandum notes that as of February 1961 a proposal for $1 million for economic rehabilitation was being prepared by Citizenship and Immigration: D.J. Hartt to J.A. MacDonald, 27 February 1961, NA, RG 10, vol. 6341, file 736-1 (ICC, Documents, at 1620). Such a proposal does not appear in the record and, presumably, never went forward.

[176] See, for example, L.S. Marchand to Leon Iron, 22 October 1965 (ICC, Documents, at 1736).

[177] Canoe Lake Transcript, vol. 2, at 154-55 (Leon Iron).

For ten years after the final payment, Canoe Lake continued to press for further compensation.[179] The response from government was that the compensation given was "more than adequate,"[180] even "generous,"[181] and that, in any event, "there does not appear to be any further claim you could maintain against the Crown."[182]

Over time, the Indian Affairs Branch changed its own perception of its role in the compensation negotiations. It had originally agreed to negotiate "with and on behalf of the Indians."[183] A subsequent letter to DND refers expressly to such negotiations "with individuals or bands of Indians."[184]

As the negotiations for the last payment from DND were being pursued, the Deputy Minister of Citizenship and Immigration confirmed that his department did

---

[178] Submission to Governor in Council, 22 May 1962, NA, RG 2 (ICC, Documents, at 1671-73); approved by Order in Council PC 1962-19/809 (12 June 1962) (not in ICC, Documents).

[179] DIAND, vols. 9-11, file 1/20-9-5 (ICC, Documents, at 1677, 1688, 1692, 1708, 1711, 1734, 1739, 1771).

[180] The Hon. Leo Cadieux, Minister of National Defence, to Martin O'Connell, MP, 21 May 1970 (ICC, Documents, at 1772).

[181] L.S. Marchand to Leon Iron, 22 October 1965, DIAND, vols. 9-11, file 1/20-9-5 (ICC, Documents, at 1736).

[182] R.F. Battle to Leon Iron, 1 March 1965 (ICC, Documents, at 1710).

[183] Laval Fortier to C.M. Drury, 24 November 1952, NA, RG 10, vol. 7335, file 1/20-9-5 (ICC, Documents, at 363).

[184] Laval Fortier to C.M. Drury, 27 February 1953, NA, RG 10, vol. 7335, file 1/20-9-5 (ICC, Documents, at 387). See also D.M. MacKay to G.H. Gooderham, 5 March 1953, NA, RG 10, vol. 7335, file 1/20-9-5 (ICC, Documents, at 390).

"indeed consider itself to be a trustee and agent for these Indians and will continue to act as such until the case has finally been disposed of."[185]

After the last payment, the role was redefined. One letter describes the role as "liaison with the Department of National Defence."[186] Despite the fact that the Indian claimants had not dealt with anyone other than Indian Affairs officials, R.F. Battle wrote that they

> acted as agents for the Indians and held many discussions with them to help establish the basis on which a claim for adequate compensation could be substantiated. The Branch was not negotiating with Indians; it only helped to present their case to the Department of National Defence.[187]

Apart from the suggestion that Indian Affairs officials acted as "agents," we find no support in the documentary record for these statements. While there were certainly discussions to obtain information, the basis of the claim for further compensation appears never to have been discussed with the Indian claimants and it was clearly Indian Affairs officials who negotiated with the Indians in relation to the terms and conditions of the interim distributions and final payments. It was, however, the more limited role that became doctrine. By 1974, internal memoranda stated that Indian Affairs

---

[185] Laval Fortier to M. Lambert, MP, 12 May 1959 (ICC, Documents, at 1270.2-.3).

[186] F.A. Clark, Indian Affairs, to Rose Iron, 5 April 1966, DIAND, vols. 9-11, file 1/20-9-5 (ICC, Documents, at 1740).

[187] R.F. Battle to Percy Bird, Editor, *National Indian Council News Bulletin*, 18 November 1965, DIAND, vols. 9-11, file 1/20-9-5 (ICC, Documents, at 1738).

> was not a party to an agreement respecting compensation to fishermen and trappers for loss of use of the area. The Department's role was simply to facilitate negotiations and compensation payments to Indians with the Department of National Defence.[188]

It is true that Indian Affairs was not specifically party to any agreement with fishermen and trappers. It can hardly be said, however, that its joint submissions to Treasury Board and Cabinet -- especially in relation to the final payment from DND -- did not represent agreements with the other department respecting compensation to Indians. Nor can it be said that Indian Affairs simply facilitated negotiations with DND since there never were any direct negotiations on compensation between DND and Indian claimants.

DND acknowledged no responsibility for the amount of compensation to Treaty Indians: "Detailed settlements with the Treaty Indians were made by the Department of Citizenship and Immigration with funds provided by the Department of National Defence."[189]

On one point, however, the two departments agreed. After 1961 there would be no further compensation to Treaty Indians for their losses caused by exclusion from the Primrose Lake Air Weapons Range. The long-standing request for assurance that the Indians would be able to resume their use of the range area when it was no longer required by the military went unanswered. The communities themselves were left with the principal role in identifying their own programs for economic rehabilitation.[190]

---

[188] J.B. Hartley to J.W. Evans, 17 October 1974, DIAND, vols. 9-11, file 1/20-9-5 (ICC, Documents, at 1797).

[189] The Hon. Allan McKinnon, Minister of National Defence, to Terry Mylander, MP, 8 November 1979 (ICC, Documents, at 2159).

ECONOMIC REHABILITATION

The Absence of a Plan

Canoe Lake presented special problems of economic replacement due to the nature of the geographical area in which it is situated, its isolation, and its fundamental dependence on resource harvesting. The Indian Affairs Branch was well aware of these factors. The regional supervisor for Saskatchewan was pessimistic at the outset.

> At the present time I can think of no project which could be set up in that area which will assure permanent success. I must say that even the fishing and trapping, with which the Indians are familiar, and which needs very little teaching by others, cannot possibly be a permanent success to all future Canoe Lake Indians, as the resources are too limited and the population of the band is almost certain to steadily increase.
>
> I must repeat that there is no future in Agriculture for the Canoe Lake Indians unless they are moved to a great distance from their present location, and they will certainly not do that in this generation.[191]

From our review of the documents, it appears to us that the difficulty which confronted Indian Affairs officials in planning a program of economic rehabilitation for Canoe Lake was fourfold. First, such a program would have to be directed at a viable economic activity, or activities, which would be roughly equivalent in scale to the hunting, trapping, and fishing income and benefits that were being lost. Second, the program had to provide for training of the individuals intended to engage in it. Third, funding for the program would have to provide capitalization of the new activity to obtain whatever buildings, equipment, and inventory were needed to start it up. Fourth, funding for the program had to provide interim income and benefits, equivalent to those that were lost, until such time as the new economic activity, or activities, were self-sustaining.

---

[190] L.S. Marchand to Leon Iron, 22 October 1965 (ICC, Documents, at 1736); J.W. Churchman to Jules D'Astous, Indian Affairs, 17 November 1965, DIAND, vols. 9-11, file 1/20-9-5 (ICC, Documents, at 1737).

[191] J.P.B. Ostrander to H.M. Jones, 4 March 1952, NA, RG 10, vol. 7334, file 1/20-9-5 (ICC, Documents, at 336).

In our view, the reason there was never a complete plan for Canoe Lake appears to be that the first hurdle was never cleared. At no time was there any confidence within the federal government that any activities could be identified which would effectively replace the resource-based livelihoods that had been either lost or diminished.[192] Clearly the finite fish and wildlife resources that remained available to the Band could not sustain the additional pressure of displaced harvesters, much less the young people who would, in the normal course, have taken up harvesting themselves. And agriculture, in that locale, was not an option.[193]

For that reason, and because of divergent opinions within the Branch,[194] the early estimate of $2.3 million for compensation of all Treaty Indians dealt only tentatively with the subject of economic dislocation. This was expressed in the original MacKay proposal forwarded to the Deputy Minister of Citizenship and Immigration:

---

[192] "The Branch has not had too much experience in rehabilitating Indians to this extent and not much precedent to go by": H.M. Jones to D.M. MacKay, 1 April 1952, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 345).

[193] "The topography and soil conditions in all the area surrounding the Canoe Lake Indian Reserve discourages any thought of gradually starting those Indians in Agriculture": J.P.B. Ostrander to Indian Affairs Branch, 22 February 1952, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 311).

[194] H.M. Jones to D.M. MacKay, 1 April 1952, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 345-46).

> Although their advice was requested, the field service have reached no unanimous conclusions, nor have they been able to make any recommendation concerning either the cost of rehabilitation or the basic method to be adopted. *The relation, therefore, between the amount suggested for compensation and the ultimate cost of rehabilitation is a matter of conjecture.* If our suggestion for compensation is adopted, the interest should be sufficient to finance a moderate program on an experimental basis with the capital available to be utilized in establishing on a permanent basis those individuals who show an aptitude for their new vocation.[195]

While this proposal wisely provided for a degree of experimentation without depleting the capital of any compensation fund, that part of the proposal was not adopted. The figures were sent forward to the Department of Transport, agent for DND, as a basis for compensation to Treaty Indians, under a covering letter that read, in part:

> This amount does not consider the larger problem of rehabilitation referred to in my previous letter but *it is our opinion that the figure above will, in addition to providing compensation, also be sufficient for the major*

---

[195] D.M. Mackay to Laval Fortier, 23 April 1952, NA, RG 10, vol. 7334, file 1/20-9-5 (ICC, Documents, at 349). Emphasis added.

> *portion of the rehabilitation costs.*[196]

We have difficulty in determining the basis for that opinion from the record in the absence of a plan for rehabilitation against which the opinion might be measured. Certainly there was no program being contemplated for Canoe Lake which is measurable against the estimate of 10 years of payments incorporated into the original compensation figure of $2.3 million. DND was well aware of this uncertainty, but was not sympathetic to the need for, or nature of, economic reparations. To an internal memorandum pointing out that "the interim payment would be inadequate to meet complete rehabilitation," a handwritten notation was added:

> The Minister [the Honourable Ralph Campney] does not feel that Nat. Def. funds should be raided to improve the std. of living of Indians.[197]

We conclude from the full record that DND, understandably concerned about commitments against its own budget, never appreciated the extent of the harm its air weapons range had done to the claimant communities and never accepted any responsibility for that harm. DND would have been content to have another department provide for the balance of any reparations due, but its basic attitude prevailed with Treasury Board and, ultimately, with Cabinet. Finally, in 1961, Citizenship and Immigration simply gave up.

---

[196] The Hon. W.E. Harris to The Hon. Lionel Chevrier, 8 May 1952, note 64 above. Emphasis added.

[197] C.F. Johns to Deputy Minister, National Defence, 13 May 1955 (ICC, Documents, at 634).

Economic Rehabilitation at Canoe Lake

Early in 1953 Chief Jean Piwapiskus (John Iron) wrote to the Deputy Minister of Citizenship and Immigration to make some suggestions about economic development projects.[198] He discussed five initiatives:

- The exclusive right to fish commercially in Brule (Keeley) Lake.
- Restocking Brule and Canoe lakes with whitefish.
- Mink farming (which he did not consider a good option).
- Additional hay lands to support livestock such as cows and hogs. "The land we have now is hardly sufficient to feed our horses." This initiative would also require training, buildings, and a mowing machine.
- Gardens to raise potatoes, oats, and barley. This option would require machinery to clear and till the land.

The Chief's letter concluded:

> But in spite of all that help the Government could provide us, it would require many years before those means could bring us sufficient income. For that reason, we are counting on assistance from the Government. The future does not look bright, as fishing is decreasing every year, fur is becoming more and more scarce and prices are low, while the population is increasing. For that reason, we want to try to earn our living by developing the lands we have. *We cannot expect to be kept by the Government, while doing nothing.*[199]

---

[198] Chief John Iron to Laval Fortier, 8 February 1953, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 381-82).

[199] Chief John Iron to Laval Fortier, 8 February 1953, see note 198. Emphasis added.

The department did pursue the suggestion of "localizing" the fishery at Keeley Lake, which involved purchasing all the commercial licences on the lake so that the harvest would be exclusively available for Canoe Lake. The department also considered two other projects to increase the trapping range available for Canoe Lake members, and a portable sawmill was provided to the community. Each of these projects is described below.

The Keeley Lake Fishery

Investigation by the local Indian agent showed that by purchasing the fishing rights of three non-Indian licensees, the Keeley Lake fishery could be localized for Canoe Lake fishermen.

> This means that by purchasing the fishing rights of the three outfits, an additional income of $3,000.00 (minimum) annually would be made available. While this additional income is not large, it would still mean considerable [sic] to these Canoe Lake people.[200]

This proposal, involving an expenditure of $2750, was approved by Indian Affairs[201] and by the Canoe Lake Band.[202] There were, however, two groups of fishermen at Canoe Lake, reported as 27 Treaty Indians and 20 Métis.[203] Accordingly, the Saskatchewan Department of Natural Resources approved the scheme on the following basis:

---

[200] W.G. Tunstead to E.S. Jones, 2 September 1955, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 766).

[201] J.P.B. Ostrander to E.S. Jones, Indian Affairs, 26 September 1955, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 778).

[202] W.G. Tunstead to E.S. Jones, 2 September 1955, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents at 765-66), and Band Council Resolution, 29 February 1956, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 865).

> We wish to advise that fishing rights on Keeley Lake of the Treaty Indians and Metis who live in the Canoe Lake area will be recognized. This policy would also apply to the Treaty Indians and Metis who move into this area and will be dependent upon fishing. This latter group may include former Metis and Indian residents as well as any new Metis or Indians who move into this area.[204]

The transaction was paid for from Canoe Lake Band funds in 1956. Subsequently, the "Indian fishermen of the Band reimbursed their Band funds for $1070.00 from compensation payments received from [DND] for loss of hunting, fishing and trapping rights on the Primrose Lake Air Weapons Range."[205] It was reported that the Canoe Lake Métis were agreeable to making a proportionate reimbursement to Band funds and suggested that they would do this from their own compensation payment when it was received.[206]

---

[203] W.G. Tunstead to E.S. Jones, 2 September 1955, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 765).

[204] G.E. Cauldwell, Natural Resources (Sask.), to E.S. Jones, 20 April 1956, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 899).

[205] H.M. Jones to E.B. Armstrong, National Defence, 25 January 1963, DIAND, vols. 9-11, file 1/20-9-5 (ICC, Documents, at 1689). See also Canoe Lake Transcript, vols. 1 and 2, at 58, 70 (Joseph Opekokew), at 75 (Paul Iron), at 172-73 (Leon Iron).

[206] N.J. McLeod to J.H. Gordon, Indian Affairs, 13 November 1958, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 1213).

The matter of compensation from the Métis was not pursued at the time[207] and was still outstanding seven years later. When the Indian Affairs Branch pressed Saskatchewan Natural Resources to declare the Keeley Lake quota the exclusive property of the Indian fishermen,[208] it was pointed out that there was no recorded agreement that the Métis would contribute[209] and the issue appears to have been dropped.[210]

While the amount of money involved is not large, it appears to this Commission that the Canoe Lake Band subsidized both the Indian and the Métis fishermen, as part of a Primrose Lake rehabilitation project, out of Band funds.

Expanded Trapping Areas

Two proposals were made to increase the trapping area available to Canoe Lake members. The first was to purchase licences in Conservation Block A-37, lying south and west of Canoe Lake, sufficient to accommodate its displaced trappers.[211] That proposal was blocked on the basis that it would be more costly than suggested, and could involve buying out licences held by Indians of other

---

[207] J.H. Gordon to N.J. McLeod, 18 December 1958, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 1223).

[208] H.M. Jones to J.W. Churchman, 25 January 1963, DIAND, vols. 9-11, file 1/20-9-5 (ICC, Documents, at 1691).

[209] J.W. Churchman to H.M. Jones, 11 February 1963, DIAND, vols. 9-11, file 1/20-9-5 (ICC, Documents, at 1695).

[210] H.M. Jones to J.W. Churchman, 1 March 1963, DIAND, vol. 1, file 671/20-2 (ICC, Documents, at 1697-98).

[211] P.B. Reader to J.P.B. Ostrander, 17 March 1952, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 337-38).

Bands to the advantage of those from Canoe Lake.[212]

The second project, which appears to have been initiated by the local office of Indian Affairs, involved trapping beaver at Waskesiu in Prince Albert National Park.[213] This seems to have been a short-lived project and does not appear in the documentation that forms the record of this inquiry.

The Sawmill

After the final payment in 1961, Indian Affairs brought in a portable sawmill to Canoe Lake as an economic development project. This was referred to in a letter from R.F. Battle to Leon Iron dealing with economic opportunities:

> The answer to *your problem* seems to lie in developing an alternate source of income. The logging and sawmilling operations will provide in part this alternative.[214]

Leon Iron told the Commission that he had worked at that sawmill.

> When they came up with the sawmill, it was only a portable one that employed only three to four people.
>
> . . .
>
> It was not a new one. I knew very well what happened, because I worked in there. Most of the time that sawmill would break down, and finally they had to move it away. This was the one that was supposed to

---

[212] J.P.B. Ostrander to Indian Affairs Branch, 20 March 1952, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 341-42).

[213] Canoe Lake Transcript, vol. 2, at 269 (Jonas Lariviere).

[214] R.F. Battle to Leon Iron, 7 April 1965, Exhibit Book, at Tab "P" (ICC, Documents, at 1713). Emphasis added.

> replace the loss of our trapping and fishing from that area.[215]

This is the only information we have about this sawmill and, on the basis of that information, we conclude that the portable sawmill could not have been a success.

Local Initiatives

The Commission received information about other activities engaged in, with limited success, by community members. These included raising livestock, carpentry, mink farming, and running a store.

The Absence of a Program

Throughout the 1950s it was certainly the case that Indian Affairs was hampered in its efforts to plan for economic replacement by the fact that it did not know how much money would be available for the purpose. During that period, Indian Affairs tried to guide the expenditure of the interim payments to promote economic rehabilitation, but in the absence of a general plan there was no way to direct compensation payments to the capitalization or interim financing of new ventures.

By 1961, when the final payment was made, the total compensation package from DND was complete. Any further planning or funding would have to come from the budget of Citizenship and Immigration. In fact, a Treasury Board official noted that a proposal on the order of $1 million was being prepared, but it never materialized.[216] If there was at that time an opportunity to implement such a program, that opportunity was lost.

---

[215] Canoe Lake Transcript, vol. 2, at 187-88, 182 (Leon Iron).

By the mid-1960s, it was apparent that Indian Affairs had neither a plan nor a budget to replace the lost economic opportunities and benefits the Indians had previously derived from the area of the air weapons range.[217] Its response to this situation was to put the burden of developing economic initiatives, within the parameters of existing departmental programs, on the communities themselves:

> This does not mean, of course, that the people whose livelihood has been so adversely affected will not be given further assistance nor does it indicate that the department is unappreciative of the problems which have been created. On the contrary, *the scale of welfare assistance has been increased as a means of alleviating the immediate problem and the department is attempting the long-term solution by the establishment of a new approach centred around the community itself.*[218]

Unfortunately, for Canoe Lake, that solution never came.[219]

LONG-TERM IMPACT OF THE AIR WEAPONS RANGE

There can be no dispute that the exclusion of the people of Canoe Lake from the air weapons range almost destroyed their livelihoods and their access to food and other resources. The results of that event continue as a sense of loss and a source of grievance in the community and are still painfully evident. The damage to the community was not only financial, it was psychological and spiritual.

---

[216] D.J. Hartt to J.A. MacDonald, 27 February 1961, NA, RG 10, vol. 6341, file 736-1 (ICC, Documents, at 1620).

[217] See, for example, Cold Lake Transcript, vol. VIII, at 1008-09 (Stan Knapp).

[218] L.S. Marchand to Leon Iron, 22 October 1965, Exhibit Book, at Tab "P" (ICC, Documents, at 1733). Emphasis added.

[219] See Canoe Lake Transcript, vol. 2, at 180-82 (Leon Iron).

> We suffered. We should not be ashamed to admit it. We really suffered after the land was taken away; we just did not have any more room left to hunt, fish and trap. No matter how much we tried to make a living from another way of life, we could not do it on our own and without resources. The government did not establish anything to replace our loss. Despite our many complaints, the best they could come up with was so minor and half-hearted that it only made matters worse, such as the sawmill I mentioned earlier.
>
> Eventually, people turned to alcohol. Young men who used to hunt, fish, had nothing to do, so they started drinking. It was the first indication of community decay, and a major symptom of the damage inflicted on us. Once the land was gone, we no longer had anything to do. We were so used to working.
>
> There is no doubt in our minds that our misfortunes stemmed from the loss of that land and the way it was then.[220]
>
> . . . Leon Iron

> MR. OPEKOKEW: [The standard of living] began to fall, and that's when -- later on in the sixties -- the welfare took over, but still it wasn't enough.
>
> COMMISSIONER PRENTICE: How do most people today make their living in the Canoe Lake area?
>
> MR. OPEKOKEW: Well, right now, I would say about seventy to eighty per cent are still unemployed. The only people who are involved in something are those that are

---

[220] Canoe Lake Transcript, vol. 2, at 155-56 (Leon Iron).

> teaching and working in the band office. But there is no other industry.[221]
>
> . . . Ovide Opekokew

It is unrealistic to think that a trapping and fishing economy could have continued, through the past 40 years, to sustain the growing community at Canoe Lake at the same level of relative prosperity it enjoyed in 1953. The problem was that the people of Canoe Lake were not given any reasonable period to adapt to the changes in the ways in which they might pursue new livelihoods. Their economy was virtually eliminated overnight. There was no plan by government and the necessary funding was not provided to change the economic base of the community. The people of Canoe Lake remain unable to gain access to lands which, at least, used to be the most productive of furs, fish, and food for them. Their exclusion from the range in 1954 created a problem of great urgency, but no solution came beyond the intermittent funding which ceased more than 30 years ago.

The basic issue before the Commission is whether the Government of Canada has a lawful obligation to make reparation -- beyond the compensation already paid -- for the harm that was done to the people at Canoe Lake by the establishment of the Primrose Lake Air Weapons Range. That is the issue we will address in parts V and VI of this report.

We do find that the creation of the Primrose Lake Air Weapons Range had such a profound impact on the community that, within one generation, a self-reliant and productive group of people became largely dependent upon welfare payments. The cumulative impact was to destroy the community as a functioning social and economic unit.

---

[221] Canoe Lake Transcript, vol. 2, at 212 (Ovide Opekokew).

PART IV

THE COLD LAKE INQUIRY

The Commission held two information gathering sessions at Cold Lake, the first from December 14 to 17, 1992, and the second from February 1 to 3, 1993. A total of 38 witnesses appeared before the panel. A further session was held in Toronto on April 22, 1993, to hear one additional witness. The details of this inquiry are set out in Annex "B" to this report, and the procedure followed is set out in Annex "C".

In this section of the report, we examine the history of the claim based on the transcript of these sessions, the extensive documentation, and the balance of the record of this inquiry.

TREATY 6

Treaty 6 was signed by Chief Kinoosayoo on behalf of the Cold Lake First Nations near Fort Pitt on September 9, 1876. Lieutenant-Governor Alexander Morris, the Treaty Commissioner, reported the Dene Chief's involvement in this way:

> Ken-oo-say-oo, or the Fish,[222] was a Chippewayan or mountaineer, a small band of whom are in this region.
>
> They had no Chief, but at my request they had

---

[222] A better translation of the name is "Jackfish": Cold Lake Transcript, vol. VII, at 816 (John Janvier). Mr. Janvier, a descendant of the treaty chief, recounts his knowledge of the treaty events at 816-21.

> selected a Chief and presented the Fish to me. He said, speaking in Cree, that he thanked the Queen, and shook hands with me; he was glad for what had been done, and if he could have used his own tongue[223] he would have said more.[224]

Under the terms of Treaty 6, the

> Tribes of Indians, inhabitants of the country within the limits hereinafter defined and described by their Chiefs,[225]

agreed to

> cede, release, surrender and yield up to the Government of the Dominion of Canada, for Her Majesty the Queen and her successors forever, all their rights, titles and privileges whatsoever, to the lands included within the following limits, that is to say:
>
> [Description of Treaty Area which is bounded, in the area under consideration, by a line "in a westerly direction, keeping on a line generally parallel with the said Beaver River (above the elbow),[226] and about twenty miles distance therefrom."]

---

[223] The treaty negotiations were conducted in English and Cree. The language referred to here by the Jackfish was his mother tongue, Dene or Chipewyan. He did speak Cree as well.

[224] Morris, note 12 above, at 192. See also 241, and 239, where the spelling "Kin-oo-say-oo" is used, as it is in the treaty document, at 359.

[225] Morris, note 12 above, at 351; Canada, *Indian Treaties and Surrenders* (1891; reprint, Toronto: Coles, 1971), vol. 3, at 35 (ICC, Documents, at 2).

[226] The Beaver River flows roughly west to east below the Primrose Lake Air Weapons Range. The elbow referred to is located near the outlet of Green Lake, south and east of Canoe Lake, at which point the river turns sharply to the north.

> And also all their rights, titles and privileges whatsoever, to all other lands, wherever situated, in the North-West Territories, or in any other Province or portion of Her Majesty's Dominions, situated and being within the Dominion of Canada.
>
> . . .
>
> To have and to hold the same to Her Majesty the Queen and Her successors forever.[227]

We note in passing that the reference to the treaty area being described "by their Chiefs" may not accurately describe the events at Fort Pitt, where the treaty was signed a few weeks after its terms were settled with the chiefs who had assembled at Fort Carlton.[228] Neither Morris's detailed report[229] nor the comprehensive notes of the secretary to the Treaty Commission[230] indicate that the Chiefs at any time described the boundaries of the lands they inhabited.[231]

The primary purpose of government, as stated above, is confirmed by the following recital from Treaty 6:

> And whereas the said Indians have been notified and informed by Her Majesty's said Commissioners that *it is*

---

[227] Morris, note 12 above, at 352; *Indian Treaties and Surrenders*, vol. 3, at 36 (ICC, Documents, at 3).

[228] Morris, note 12 above, at 237, confirming that the treaty, as written at Fort Carlton, was the treaty read and explained to the chiefs at Fort Pitt.

[229] Morris, note 12 above, at 180-96.

[230] Morris, note 12 above, at 186-244. Morris felt that publication of these notes would assist those called upon to administer the treaty by showing "what was said by the negotiators and by the Indians, and preventing misrepresentations in the future": at 195-96.

[231] See also Cold Lake Transcript, vol. VII, at 818 (John Janvier).

> *the desire of Her Majesty to open up for settlement, immigration and such other purposes as to Her Majesty may seem meet, a tract of country bounded and described as hereinafter mentioned, and to obtain the consent thereto of Her Indian subjects inhabiting the said tract,* and to make a treaty and arrange with them, so that there may be peace and good will between them and Her Majesty, and that they may know and be assured of what allowance they are to count upon and receive from Her Majesty's bounty and benevolence.[232]

In exchange for the surrender of 121,000 square miles of land, the federal Crown made the following assurances to the Indians in regard to their rights to hunt and fish:

> Her Majesty further agrees with Her said Indians that they, *the said Indians, shall have the right to pursue their avocations of hunting and fishing throughout the tract surrendered as hereinbefore described,* subject to such regulations as may from time to time be made by Her Government of Her Dominion of Canada, and *saving and excepting such tracts as may from time to time be required or taken up for settlement, mining, lumbering or other purposes by Her said Government of the Dominion of Canada,* or by any of the subjects thereof duly authorized therefor by the said Government.[233]

During the treaty negotiations, Commissioner Morris made the following address to the Indians assembled at Fort Pitt:

---

[232] Morris, note 12 above, at 351; *Indian Treaties and Surrenders*, vol. 3, at 36 (ICC, Documents, at 3). Emphasis added.

[233] Morris, note 12 above, at 353; *Indian Treaties and Surrenders*, vol. 3, at 37 (ICC, Documents, at 3). Emphasis added.

> All along that road I see Indians gathering. I see gardens growing and houses building; I see them receiving money from the Queen's Commissioners to purchase clothing for their children; at the same time *I see them enjoying their hunting and fishing as before, I see them retaining their old mode of living with the Queen's gift in addition.*[234]

The Indian understanding of these assurances in no way differs from what Commissioner Morris told their Treaty Chief.

> I believe that under Treaty they would be allowed to exist as they did before, making a living from the lands they had used before the Treaty, and this is where the trap lines came from, in the Hahtué [Primrose Lake] area.[235]
>
> . . . Allan Jacob

The facts demonstrate that the creation of the Primrose Lake Air Weapons Range interfered drastically with the old mode of living of the Cold Lake Chipewyans. This, they say, was a breach of their rights pursuant to Treaty 6.

COLD LAKE'S DEPENDENCE ON THE AIR WEAPONS RANGE LANDS

The Cold Lake Chipewyans are referred to as the "Thilan-ottine," identifying them as the most southern of the Chipewyan peoples, traditionally residing along the Churchill River system and extending into Cold Lake.[236] Their oral history relates that they are indigenous to the Primrose Lake area, which was the centre of their traditional lands. The importance of that lake was epitomized by the small settlement at Suckerville. They regarded the area as a home.

---

[234] Fedirchuk & McCullough, at IV-38. Morris, note 12 above, at 231; see also 221. Emphasis added.

[235] Cold Lake Transcript, vol. VI, at 802 (Allan Jacob). At 801, he indicates that "Hahtué" is the Chipewyan name for Primrose Lake and means "Geese Lake."

[236] Fedirchuk & McCullough, at X-85.

> As a child, I was raised in Primrose. *We used to live year-round in Primrose. We had our home over there.* I lived with my parents, of course, as a child. My dad did trapping, hunting; my mother made moose hides and made dry meat for the summer, or in the fall people would go hunting. They would do the same thing, put the meat away for the winter. Everything that they got was fish -- just like fish, birds, mose, things like that, anything edible. It wasn't played with, people use it -- even the rabbit, the chicken. The rabbit, in the winter the woman made blankets with it, they made rabbit blankets or they made vests and lined it for the men or for the children to wear. The feathers from ducks they made blankets, something useful. They never threw anything away.[237]
>
> . . . Genevieve Andrews

> Unless somebody can point to me anything different, I believe that the people here have been indigenous to this area for untold centuries, even before then, because the language is completely of the area.
>
> . . .
>
> What I heard was from the people that Suckerville was the centre. From my experience, it was the centre. I went up in the north to the trap line with my father in January 1947, when I was very young. We went to Suckerville. We travelled from there.
>
> . . .

---

[237] Cold Lake Transcript, vol. I, at 55-56 (Genevieve Andrews). Emphasis added.

> The tradition of the people was that they ranged all in that area.[238]
>
> . . . Allan Jacob

> MR. HENDERSON: I think for the record, Mr. Chairman, Mr. Muskego indicated on the map a home site or cabin site on the southeast shore of Primrose Lake and harvesting activity north and northwest of the lake in both Saskatchewan and to some extent in Alberta. Is that right, sir?
>
> MR. MUSKEGO: Right.
>
> MR. HENDERSON: Were there a lot of cabins in the area where you indicated that you had a cabin on the southeast shore?
>
> MR. MUSKEGO: Yeah, there was something like a village. Well, they even had a church over there built.
>
> MR. HENDERSON: Do you recall who built the Church?
>
> MR. MUSKEGO: The Roman Catholic Church. The priest been up there said a midnight mass once or twice. So actually, this is the place where we used to live. People from areas -- surrounding areas come down there knowing that the priest is going to be there. So you can see for yourself that was our home either way, the Reserve here and back over there. And that's why the feeling that I have at this time is still -- you know, I'm part of that place. And I'm sure that the older people that died feel as though they own that place too.[239]
>
> . . .
>
> *That was a home. That was our second home out*

---

[238] Cold Lake Transcript, vol. VI, at 802-04 (Allan Jacob).

[239] Cold Lake Transcript, vol. I, at 36-37 (Pierre Muskego). The presence of this little village known as Suckerville was also referred to by Stan Knapp in his testimony, vol. VIII, at 1032.

> *there. That was -- in the first place, our people used to stay up in Primrose until they got this reservation here. So when they got this reservation, well, they come here in summer but then they're up north in winter.* Most every one of them had moved back in winter as soon as the snow falls.[240]
>
> . . . Pierre Muskego

> The traditional territory of the Cold Lake First Nations include this area which we refer to as "Hahtué" in our language. Prior to the Department of National Defence occupation, the Chipewyan people were self-sufficient in practising their traditional way of life in the Primrose area; this means the hunting, fishing and trapping, picking berries, and gathering roots were normal activities that we depend on for our survival. *Everything we need, we needed for good living was there for us: Plenty of moose, fish, and wild berries. The income from trapping and fishing was used to sustain our families, our farms, and our way of life.*[241]
>
> . . . Chief Mary Francois

The information we gathered at Cold Lake told us something about the life on the land in the Primrose area.

> The timber that's there, we made good use of it. Of any kind of a timber that's in there, such as birch, pines -- we make log houses with pines, barns. Birch, we make canoes with it. We make baskets with it. And for our storage for our fridge, which we call fridge over here -- not with electricity, we had no electricity. We used bitch lights. I might as well say it outright because that's the way we called it. We made storage bins in the muskeg.

---

[240] Cold Lake Transcript, vol. I, at 21 (Pierre Muskego). Emphasis added.

[241] Cold Lake Transcript, vol. I, at 2 (Chief Mary Francois). Emphasis added.

> [O]ur fathers killed moose, deer, caribou. The women, they tanned these hides in order for them to store stuff in there for the winter, and they put this away in the bins. Most of these people lived out there as we lived out there, throughout the winter, throughout the summer most of us. We picked berries and we stored it away -- not in jars, in the baskets.
>
> We fish. And we make smoked fish as we make dried meat and pemmican. We store it all away for the winter -- same thing with fish . . . We used the skin, we don't throw it away. We use it for our windows. Caribou hides, deer hides, what we could think is bright enough. We used that for windows.
>
> Birds, ducks. They had dogs to hunt ducks, they didn't need guns all the time to hunt ducks. They stored all these things away. [Pelicans]. They used the feathers to make blankets with. They skin it, they used even that for blankets. Its pouch -- if you made grease, they put that grease into its pouch, store that away, as I just finished telling you for a light, for a bitch light. Of any kind of an oil that you could get out of species, they store everything away in order for us to survive.
>
> . . .
>
> It wasn't a very easy task, but we still went through with it because this was the only way that we lived, this was our livelihood.[242]
>
> . . . Eva Grandbois

One tradition was that trappers and fishermen would come south to the reserves for Christmas and sell what they had harvested up to that point.

> When people came back for Christmas, I think was really the happiest time. You could hear sleigh bells going to Midnight Mass. New Year's, people would make a big

---

[242] Cold Lake Transcript, vol. III, at 436-38 (Eva Grandbois).

> feast. It was really a nice life and now it seems like all our tradition, culture is just fading out of our hands.[243]
>
> . . . Catherine Nest

The traditional lifestyle of the Cold Lake Chipewyans remained virtually unchanged after the signing of Treaty 6 up to the creation of the Primrose Lake Air Weapons Range. The area was the basis of their economy.

> This was -- this Primrose Lake is the most important land that they have taken away from us. This was an Indian bank. We don't need to put money away in a bank over there to be waiting for us. *The money is waiting for us in Primrose Lake. That's our bank. This is where we get our money, and we make plenty of it, too.*[244]
>
> . . . Eva Grandbois

> Our Dene people were the masters of the forest. They had complete and almost intimate knowledge -- I would say almost complete knowledge -- of their environment.[245]
>
> . . . Allan Jacob

> There was a lot of activity up in the Primrose Lake area at that time. *What Primrose had to offer* -- what there was in Primrose -- when I say people, I mean *the band members* and the people that were allowed to be up in that area -- *were trapping, fishing, hunting, logging,*

---

[243] Cold Lake Transcript, vol. II, at 231 (Catherine Nest). See also vol. VI, at 673-74 (Charlie Metchewais).

[244] Cold Lake Transcript, vol. III, at 438 (Eva Grandbois). Emphasis added. See also, Cold Lake Transcript, vol. VIII, at 1022-23 (Stan Knapp).

[245] Cold Lake Transcript, vol. VI, at 778 (Allan Jacob).

> *recreation for the holidays in the summer, and also for materials that they can pick like birch bark to build their canoes.* I helped my granddad build a canoe. Snowshoes, baskets for food storage, toboggans and we also made moose hide for dog harness. *That's what Primrose had to offer the people, which was plentiful. They made a successful living out of it, and it was very enjoyable. It was a pleasant way of life.*[246]
>
> . . . Charlie Metchewais

> So I used to run pretty big outfit, fishing at one time. I used to run as high as forty nets at one time. So anyway, finally, them days *in 1948*, well, I came from the north there and I made, as I say, *I made twenty-one hundred dollars clear money after I paid all my bills at Primrose area.*[247]
>
> . . . Jobby Metchewais

Counsel for the government referred us to an Indian Affairs document, stating that "only about 25% of the traditional hunting area of the Cold Lake Band was affected"[248] by the range, in support of their contention that the documentation is equivocal on the extent of community reliance on the lands around Primrose Lake. [249] We do not accept that contention. Other government documents confirm Cold Lake's position that the people were profoundly affected by their exclusion from the air weapons range. As an example, the fur supervisor, Ivor Eklund, reported the following:

---

[246] Cold Lake Transcript, vol. VI, at 669-70 (Charlie Metchewais). Emphasis added.

[247] Cold Lake Transcript, vol. II, at 138 (Jobby Metchewais). Emphasis added.

[248] J.P.B. Ostrander to R.F. Battle, 10 May 1956, NA, RG 10, vol. 7335, file 1/20-9-5 (ICC, Documents, at 916).

[249] Submissions on Behalf of the Government of Canada, at 16.

> It is now quite apparent that some members of the Cold Lake Band may have trapped or fished in the area without a license in the capacity of helpers or employees of license holders. It is also apparent that many members of this band, not receiving compensation or rehabilitation, at one time or another hunted game or fished for domestic use or were employed in lumber camps. *It is concluded, therefore, that all adult members of the Cold Lake Band at one time or another had a form of revenue from this area, either directly or indirectly.*[250]

As at Canoe Lake, it is clear that many, perhaps nearly all, of the people had some form of reliance on these lands, and that the total number is greater than the number of those holding fishing or trapping licences.[251] A memorandum to the Director of the Indian Affairs Branch indicates that 277 Cold Lake band members were "displaced" -- meaning actually displaced from the range or affected by overcrowding from those who were excluded -- while 223 were otherwise "affected," for a total of 500.[252] This would be very close to the total population of the Cold Lake First Nations at that time.

Based on the information before us, we find that the Primrose Lake area was the "centre of operations" for the social and economic activities of the Cold Lake people and that they relied heavily upon those lands for their sustenance and survival. The lifestyle of the Cold Lake people had not changed over centuries and, until they were excluded from the range area, they were entirely self-reliant. Their bond with the land around Primrose Lake provided them with a strong sense of community pride and a traditional way of life handed down from generation to generation.

---

[250] R.I. Eklund to R.F. Battle, 15 December 1955, NA, RG 10, vol. 7335, file 1/20-9-5 (ICC, Documents, at 819). Emphasis added. See also H.M. Jones to D.M. MacKay, 16 October 1951, NA, RG 10, vol. 7334, file 1/20-9-5 (ICC, Documents, at 268); D.M. MacKay to Laval Fortier, 22 November 1951, NA, RG 10, vol. 7334, file 1/20-9-5 (ICC, Documents, at 285); R.I. Eklund to H.R. Conn, 29 February 1952, NA, RG 10, vol. 7334, file 1/20-9-5 (ICC, Documents, at 318).

[251] One estimate placed the number of licence holders at 104: see S.C. Knapp to R.F. Battle, 19 January 1956, NA, RG 10, vol. 7335, file 1/20-9-5 (ICC, Documents, at 841).

[252] J.P.B. Ostrander to H.M. Jones, 21 March 1955, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 593).

THE INTRODUCTION OF COMMERCIAL LICENCES

Prior to the creation of the air weapons range, the Cold Lake people were engaged in commercial fishing and trapping under an Alberta licensing regime. While some Cold Lake Band members trapped and fished in Alberta, the bulk of these economic activities took place in two Saskatchewan management districts known as Conservation areas #A42 and #A43.[253] This licensing system for commercial trapping and fishing was introduced by the provinces in the 1940s.

> MR. METCHEWAIS: At one time, the people didn't really have a registered trap line before. Then these laws start coming out. The land was open. There was no law. I don't think some people even need a license. It was free. . . . Then they made this rule that divided into blocks. That's why we have that area that me and my granddad worked together.
>
> MR. HENDERSON: Do you remember when they did that?
>
> MR. METCHEWAIS: That was maybe about '46 when this start . . . That's the only time people really stayed in

---

[253] See R.I. Eklund to H.R. Conn, 29 February 1952, NA, RG 10, vol. 7334, file 1/20-9-5 (ICC, Documents, at 319) for a list of Cold Lake trappers and fishermen engaged in commercial activities in the provinces of Alberta and Saskatchewan.

their own area. Before, there's no such area you had to be. That's why people were mixing all over.[254]

. . . Jobby Metchewais

We had trapping licenses, everyone that -- I mean, they started giving those trapping licenses, we had to pay for it. It wasn't much, only a dollar anyway or something like that, and we kept -- every year then we have to buy that before we go back. That's -- we were trapping to sell our fur.

. . .

Well, in Saskatchewan there were not registered lines. I remember a few years I been up there that they made into blocks -- block areas where the closest resident, the one that reside up there -- like, you know, they have cabins, there's trappers in there that made blocks and then they -- that's where they -- that was for the muskrat and beaver and this and that. But I don't recall the first year that I bought my license.[255]

. . . Pierre Muskego

In 1944 I went up with my grandfather and stayed in the trapper's cabin up there between the junction of Martineau River and the Muskeg River. That was the allotment for his trapping area, and he shared his trap line with me and educated me in the trapping area and taught me a lot of the northern life and the way of life in the north. I spent the whole winter with him.[256]

. . . Charlie Metchewais

---

[254] Cold Lake Transcript, vol. II, at 148-49 (Jobby Metchewais).

[255] Cold Lake Transcript, vol. I, at 23-24 (Pierre Muskego).

[256] Cold Lake Transcript, vol. VI, at 669 (Charlie Metchewais).

> MR. MAURICE: Did he [your husband, Joseph] sell furs under his dad's trapping license, then?
>
> MRS. MARTIAL: No. What he used to get, we sell it ourselves. Because I believe there was no license in 1940, and there was not many white people. Only after -- I can't say what year, but the white people start to come in, game warden and -- and for the fishing I don't know.[257]
>
> . . . Isabelle Martial

Counsel for the government submitted that only those individuals who held commercial licences for fishing and trapping were entitled to compensation when the range was closed off. The introduction of a commercial licensing regime had been a relatively new innovation in Cold Lake at the time of the creation of the weapons range. During the decade prior to this critical point in history, we find that many adult members of the community made their living through the sale of fish and furs even though they did not hold licences to do so.

It was fairly common for the younger men and women to use their parents' or grandparents' equipment and to sell their furs and fish under their licences as well.[258] In addition, there were those who worked as helpers or employees with trappers and fishermen, and many who derived income from logging[259] in the range area.

---

[257] Cold Lake Transcript, vol. IV, at 485 (Isabelle Martial).

[258] For example, Ernest Ennow did not receive any compensation even though he earned a living as a trapper and a fishermen by operating under his grandfather's licences. See Cold Lake Transcript, vol. I, at 97-98 (Ernest Ennow).

[259] See, for example, Cold Lake Transcript, vol. VI, at 689-91 (Charlie Metchewais).

THE DESTRUCTION OF THE TRADITIONAL ECONOMY

When the air weapons range was created, the effect upon the lives of the people at Cold Lake was profound. With the exception of some limited agricultural activity, the subsistence patterns of the Cold Lake people had not changed for centuries. The community was relatively isolated and its reliance upon the traditional lifestyle and economy was almost complete.

Although the Cold Lake people may not have fully appreciated the impact that the air weapons range would have upon their lives, it is clear that government officials were aware of the grave consequences. In November 1951 the Minister of Citizenship and Immigration wrote to one of his colleagues in the House of Commons:

> Due to the already overcrowded condition of the immediately adjacent areas it would appear that there is slight chance of these trappers being placed on new lines, and it would appear, therefore, that it will be necessary to re-establish them in a new vocation, probably agriculture.[260]

Early in 1952, H.M. Jones, then Supervisor of Welfare Services for Indian Affairs, wrote to his field staff to invite suggestions as to how the problem might be dealt with:

> On the question of rehabilitation, the suggestion was made in Alberta that an attempt be made to establish the Cold Lake Indians in livestock raising and mixed farming. . . in spite of the fact that. . . the purchase of farm equipment or cattle for Indians has not in the past

---

[260] The Hon. W.E. Harris, Minister of Citizenship and Immigration, to D.S. Harkness, MP, NA, RG 10, vol. 7334-36, file 1/20-9-5 (ICC, Documents, at 283).

> been very encouraging. However, there is one fundamental difference between past experiments of this nature and the present case in that past instances were cases of offering to the Indians an alternative to their preferred method of making a livelihood while the preferred method was still available to them. In this case they have no choice but must give up hunting and trapping and turn to other means of making a livelihood.
>
> *What new trade or profession they might turn to is a matter of conjecture* and we are depending on you for some guidance in this respect *even if no alternative presents itself other than setting up a capital fund, the interest from which could be used to supplement the livelihood not only of the ones displaced by the Air Weapons Range but the whole band* if crowding on the remaining trapping grounds is going to *reduce their income below subsistence level.* I think it is agreed that if the present trappers were allowed to continue trapping on the remainder of the conservation block, they would not only fail to make a living themselves but would drastically reduce the income of the persons at present trapping on the area.[261]

When the range was finally closed to the public in the late summer of 1954 the economy of the Cold Lake communities collapsed almost immediately.[262] On November 10, 1954, R.I. Eklund wrote that Chief Abraham Skani (Scanie) was pressing for prompt action for compensation for lost traplines because "employment [was] scarce in his area and combined with crop failures generally, his Band was already suffering from lack of a means of earning their way."[263] Six days later, a Band Council Resolution urged prompt action on the part of Indian Affairs for the payment of compensation or "direct relief."[264]

---

[261] H.M. Jones to J.P.B. Ostrander, 29 February 1952, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 316). Emphasis added.

[262] E.A. Robertson to H.M. Jones, 12 August 1954, NA, RG 10, vol. 7335, file 1/20-9-5 (ICC, Documents, at 457).

The disastrous nature and extent of the loss experienced by the Cold Lake Chipewyan people were fully expressed to us by several of the elders.

> Primrose Lake was our livelihood . . .[w]hich was taken away. When Primrose Lake was taken away, it made us what we are today. *We used to be proud people. It killed our pride; it killed our culture; it killed everything that we stood for. We used to be a proud people; today we are a welfare people.* We wait for our welfare every month, and there are very few people that have jobs here. There are very limited jobs and most of our people, like I say, they wait for welfare. When they took our bombing range away, that's what they turned us into -- welfare people.[265]
>
> . . . Francis Scanie

> So, it was kind of a disruption, I would say, when the DND took over these tracts of land and the lake. The transition between, especially on my dad's side, he could not read nor write. He was a trapper. Mind you he had a home, a small farm and the like. But, I believe the transition leading up to today, has had quite an impact socially, economically, emotionally, environmentally, you name it.[266]
>
> . . . Maurice Grandbois

---

[263] R.I. Eklund to R.F. Battle, 10 November 1954, NA, RG 10, vol. 7335, file 1/20-9-5 (ICC, Documents, at 495).

[264] Chipewyan Indian Band Council Resolution, 16 November 1954, NA, RG 10, vol. 7335, file 1/20-9-5 (ICC, Documents, at 496).

[265] Cold Lake Transcript, vol. VI, at 732-33 (Francis Scanie). Emphasis added.

[266] Cold Lake Transcript, vol. VI, at 749 (Maurice Grandbois).

> Everybody was sort of, you know, lost, because we lost the best part of our living, you know what I mean. That was our trade. Trapping was our trade, and fishing and logging in that area. A lot of people used to work in the bush. But after, they felt lost after we lost the trap line.
>
> But anyway, we had to do the best we could. Whatever jobs we could get, well, we just -- that's what we did. We had no experience.[267]
>
> . . . Jobby Metchewais

> We had men that looked after us. We didn't need no handouts and here all of sudden we're getting a hand out boy, that hurt. I really -- I know that that hurt the pride of these people because they were so independent and nowadays it just seems natural that if you don't work, you get a welfare cheque, you know. And people -- young people are in that lineup.[268]
>
> . . . Nora Matchatis

The displacement of the Cold Lake people from their traditional harvesting territories affected the entire community and had a catastrophic effect upon their economy. On the information before us, there was little opportunity to continue trapping after the range closed. Although the range was opened from time to time for limited commercial fishing and hunting, this was not enough to counteract the disastrous impact that the air weapons range had upon the Cold Lake people.

---

[267] Cold Lake Transcript, vol. II, at 163 (Jobby Matchewais).

[268] Cold Lake Transcript, vol. II at 207 (Nora Matchatis).

Thus, the fears expressed by Indian Affairs officials, and others,[269] that this would reduce Indian income below the subsistence level were realized in a very short period of time.

COMPENSATION NEGOTIATIONS

To negotiate compensation of those affected by creation of the air weapons range, the Department of National Defence initially relied upon officials from the Department of Transport to represent the government. These officials, who conducted interviews with individual Indians to obtain information on their income from fur catches and the value of their cabins and equipment, took a minimal view of who was deserving of compensation and what they should be paid.[270] In 1952, before the Indian Affairs Branch undertook to represent the Treaty Indians in dealings with DND, D.M. MacKay, the Director of the Branch, anticipated the reaction to his proposal for compensation:

> Having some intimation of the basis on which negotiations were conducted prior to our interest in the matter, we know that these figures will come as a definite shock to the persons who selected the range on the assumption that it was a vast area of non-productive land.[271]

---

[269] One observer said that the range would create "terrible poverty." J. Laurie, Indian Association of Alberta, to J.M. Dechene, MP, 13 October 1951, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 264).

[270] See, for example, H.M. Jones to D.M. MacKay, 16 October 1951, NA, RG 10, vol. 7334, file 1/20-9-5 (ICC, Documents, at 268), and R.I. Eklund to G.H. Gooderham, 25 October 1951, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 273).

[271] D.M. MacKay to Laval Fortier, 23 April 1952, NA, RG 10, vol. 7334, file 1/20-9-5 (ICC, Documents, at 348-49). This document is frequently referred to in this report as the

The figures he referred to were gathered from a number of sources and from a variety of proposals by senior officials of Indian Affairs in Ottawa. Those proposals all showed that compensation would have to be substantial, and several addressed the need to fund economic rehabilitation at the Band level.

Initial Contact

After the range was announced, an Indian Affairs employee named R.I. Eklund conducted field interviews with many Cold Lake Band members to discuss the plans for the range and to estimate its impact on the Indians. In particular, he compiled information on the value of cabins and equipment, loss of income from commercial fishing and trapping, value of domestic hunting and fishing, and amounts required for a rehabilitation project based on livestock raising and mixed farming.[272] Some of this work had already been done by officials of the Department of Transport, and some appears to have been done by provincial wildlife officers.

One of these people, whom we have not been able to identify, made a lasting impression.

> This guy come in, this man. All at once, a guy come in, and, gee, what's he doing? He coming with nothing, no bedding, no food, nothing, you know. He had a little briefcase or some little kind of little briefcase, and he said, well -- well, I start talking to a guy. I thought the man was lost or something, you know. I was kind of surprised to see a man like that, in that area, which I

MacKay proposal.

[272] H.M. Jones to G.H. Gooderham, 19 February 1952, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 305).

> never see, you know. There's hardly any strange people come up there, you know.
>
> . . .
>
> So we would leave him there [when we went to check the traps]. He wouldn't say nothing. So anyway, I guess -- I didn't know -- I guess he is counting our fur, how much fur we were getting a day. I guess that's what he is doing. I didn't notice. So anyway, he stayed about three days with us, that guy. Every day, he is hanging around. And I talked to him. And he never came up with anything about -- he didn't mention. He'd just stand there, you know. I did start to wonder.
>
> So this last day, I guess he's going to leave, but I guess he must have been with the other people before he came to our place. The way he is talking, he mentioned some names where he was with those people . . .
>
> So one day he said, well, then he told me, he said -- this was in March -- and he told me, he said, you are not going to no longer come back in this area within when you go home for Easter. That was it. He told me . . . you should take all your traps, everything you got, out of here.[273]
>
> . . . Jobby Metchewais

There seemed to be a strong sense at Cold Lake that giving up their use of the air weapons range lands was a contribution to the good of the country.

> COMMISSIONER LAFORME: Did you know what they were going to do was just experiment with dropping bombs on it?
>
> MRS. MATCHATIS: No. We didn't know that. But they just said, like that Air Force well to them it was just like the Army and the Air Force it all seems like it's people

---

[273] Cold Lake Transcript, vol. II, at 150-52 (Jobby Metchewais).

> that are working for the good of the country.
>
> And the Air Force are going to take it it's the people like for the -- like for the good of the country they are taking this and she said, well, she said. If it's for something good, she said, I guess it should be okay.[274]
>
> . . . Nora Matchatis

Compensation for Cabins and Equipment

Eklund completed the evaluation of the cabins, traps, equipment, and other personal property that would be left behind in the range. The figure reported to headquarters for Cold Lake was $31,525, and this was the amount that was distributed to individuals as the first payment.

When DND requested itemization of the buildings and equipment for all Treaty Indians, a list of goods and their valuation was supplied together with the notation, "The only way further information could be supplied would be to attempt an actual inventory which would be prohibitive in cost."[275]

The actual payment of compensation for cabins and equipment was reported by Eklund on February 9, 1955, six months after the range had been closed off and four months after the payment had been authorized by the Treasury Board.[276]

---

[274] Cold Lake Transcript, vol. II, at 213-14 (Nora Matchatis). The person Mrs. Matchatis refers to in her testimony is Rosalee Andrew, an elder whom she cared for at one time and to whom she would look for advice. See also L.C Hunter to Indian Affairs Branch, 14 September 1960, NA, RG 10, vol. 7336, file 1/20-9-5 (ICC, Documents, at 1409), which reports the Indian view that the range was "for good of the country."

[275] C.M. Drury to Laval Fortier, 14 December 1954, and Laval Fortier to C.M. Drury, 14 January 1955, both NA, RG 10, vol. 7335, file 1/20-9-5 (ICC, Documents, at 508, 538).

[276] Treasury Board, excerpt from minutes of meeting, 27 October 1954, NA, RG 55, vol. 20545, series A1 (ICC, Documents, at 491). Those entitled to compensation payments for equipment appear to have received their cheques at the end of January 1955: R.I. Eklund to R.F. Battle, 14 February 1955, NA, RG 10, vol. 7335, file 1/20-9-5 (ICC, Documents, at 573).

Eklund reported that, following his meeting with the Cold Lake Band members to compensate them for their equipment and cabins, he received 25 grievances from trapper-fishermen and attached details of these complaints for further consideration by senior Indian Affairs officials. He provided the following synopsis of the complaints:

> Some complainants question whether or not commercial fishing equipment was included in the recent settlement payments. Some complainants feel that settlement for trapping equipment was not equitable. Several complainants hesitated to accept the cheques tendered in settlement until assured that their grievances would be recorded and forwarded for further consideration.[277]

Eklund states that all the complainants were interviewed by a Mr. Washington, the Transport official who represented DND at the time, and some were also interviewed by him. At least one was not interviewed by either. Eklund sent forward his recommendation that an additional $2400 be paid to several complainants,[278] but this was not acted upon. It was felt that reopening the issue of equipment claims "except on the basis of new individual claims, would be to invite endless recriminations from all Indians of the band.[279] Even if a good purpose could be served," further Treasury Board approval would be required.[280] This was not sought.

---

[277] R.I. Eklund to R.F. Battle, 9 February 1955, NA, RG 10, vol. 7335, file 1/20-9-5 (ICC, Documents, at 550-66).

[278] R.I. Eklund to R.F. Battle, 9 February 1955, and R.F. Battle to J.P.B. Ostrander, 7 March 1955, both NA, RG 10, vol. 7335, file 1/20-9-5 (ICC, Documents, at 550, 589).

[279] This consideration would eventually lead to discouragement of new individual claims as well. See, for example, R.I. Eklund to R.F. Battle, 15 December 1955, NA, RG 10, vol. 7335, file 1/20-9-5 (ICC, Documents, at 819-20).

The 1955 Interim Payments

It seems to have been clear all along that compensation for cabins and equipment would go to the individuals concerned. The basis for other compensation was not so clear.

D.M. MacKay, then Director of the Indian Affairs Branch, developed a proposal for Cold Lake for compensation in the amount of $1,697,250, representing 10 years' loss of fur, fish, and game for all purposes. Unlike the approach taken at Canoe Lake, and with no explanation for the difference, there was no increment intended to compensate "the Band at large for their general hunting and fishing within the area of the air weapons range."[281]

> It would not be advisable to pay the entire amount to the individuals since undoubtedly they would succeed in dissipating the money in a short time. It is therefore suggested that only the amount for their equipment . . . should be paid to the individuals concerned and that *the balance . . . be deposited either to the trust funds of the individual bands concerned or to a central fund where it would be available to at least make a substantial contribution toward the rehabilitation program that must be undertaken.*[282]

---

[280] J.P.B. Ostrander to R.F. Battle, 20 May 1955, NA, RG 10, vol. 7335, file 1/20-9-5 (ICC, Documents, at 635-36).

[281] H.M. Jones to Laval Fortier, Deputy Minister, Citizenship and Immigration, 13 May 1953, NA, RG 10, vol. 7335, file 1/20-9-5 (ICC, Documents, at 394).

[282] D.M. MacKay to Laval Fortier, 23 April 1952, NA, RG 10, vol. 7334, file 1/20-9-5 (ICC, Documents, at 349). Emphasis added.

The MacKay proposal generated a compensation figure of $2,331,044.98 for all Treaty Indians, including $39,980 for loss of cabins and equipment. The underlying rationale for these figures is as follows:

> Where other trapping is available it is suggested that a five year basis would be acceptable [Goodfish Lake, Heart Lake and Beaver Lake] but where no other areas are available ten times the annual value is the minimum figure that could be placed on the resources [Canoe Lake and Cold Lake]. The figures arrived at by this means are $39,980 for equipment and $2,291,064.98 for the fur, fish and game making a total of $2,331,044.98. I may say that this figure is based on the best available information and that the detailed break-down by individuals and bands is available for study if you so desire. *This amount does not consider the larger problem of rehabilitation referred to in my previous letter but it is our opinion that the figure above will, in addition to providing compensation, also be sufficient for the major portion of the rehabilitation costs.*[283]

These figures formed the basis of a submission for compensation to Treaty Indians sent by the Minister of Citizenship and Immigration, the Honourable W.E. Harris, to the Minister of Transport, whose department was negotiating on behalf of DND. His letter noted, with respect to the $2.3 million figure:

> This amount does not consider the larger problem of rehabilitation referred to in my previous letter but it is our opinion that *the figure above will, in addition to providing compensation, also be sufficient for the major*

---

[283] See note 282 above.

portion of the rehabilitation costs.[284]

As negotiations proceeded over a period of nine more years, the line between compensation and ecomomic rehabilitation was consistently blurred. While the documents do not use either term consistently, we understand compensation -- apart from the payments for buildings and equipment -- to mean payment for loss of direct income and loss of food and other domestic resources. Economic rehabilitation, on the other hand, would refer to a funded program to replace the livelihood which had previously provided that income and food, as well as other resources every year. As will be seen, the attempt to achieve both goals, with too little funding to achieve either, led to catastrophe for the community.

General compensation negotiations for the air weapons range were, at this time, still being conducted by the federal Department of Transport on behalf of the Department of National Defence. The Indian Affairs Branch became involved at the request of DND.[285] On November 3, 1952, Laval Fortier, Deputy Minister of Citizenship and Immigration, wrote to his counterpart at DND:

> Please be advised that the officials of the Department would be most willing *to negotiate with and on behalf of the Indians concerned* in an effort to arrange a settlement of Indian claims to compensation for their rights in the area under consideration for the air weapons range.[286]

---

[284] The Hon. W.E. Harris, Minister of Citizenship and Immigration, to the Hon. Lionel Chevrier, Minister of Transport, 8 May 1952, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 353). Emphasis added.

[285] C.M. Drury, Deputy Minister, National Defence, to Laval Fortier, 28 October 1952, NA, RG 10, vol. 7335, file 1/20-9-5 (ICC, Documents, at 362).

[286] Laval Fortier to C.M. Drury, 3 November 1952, NA, RG 10, vol. 7335, file 1/20-9-5 (ICC, Documents, at 363). Emphasis added.

DND clearly regarded the settlement proposal as too generous to the Indians. The Deputy Minister, C.M. Drury, reported a conversation with Fortier in the following terms:

> I have spoken to Mr. Fortier regarding the Indians and the proposal to charge us $2 million for resettlement. He tells me that some 500 Indians are involved and I advised him that figure of $40,000 a head to resettle Indians seemed to me to be grossly excessive.[287]

This was a miscalculation. The per capita payment for 500 Indians would have been $4000. Drury subsequently suggested to his Minister that a payment of "two and one half years' revenue would be reasonable for us to pay."[288] His Assistant Deputy Minister introduced another consideration, which lies at the heart of the dispute over compensation:

> [I]t might be more realistic for this department to resist a suggested basis of compensation which would be tantamount to taking what would, in effect, be an Indian Reserve, whereas in actual fact it may be found that the rights of the Indians to these lands may be relatively nebulous.[289]

On this basis, compensation would no longer be considered in terms of what was necessary or fair, but in terms of what legal rights the Indians had to it. At this point, however, neither Indian Affairs nor the Indians were aware that DND might take such a legalistic approach.

---

[287] C.M. Drury to Basil B. Campbell, National Defence, 21 March 1953 (ICC, Documents, at 392).

[288] C.M. Drury to Minister of National Defence, 1 April 1953 (ICC, Documents, at 393).

[289] Basil B. Campbell to C.M. Drury, 2 July 1953 (ICC Documents, at 408).

In a letter dated December 30, 1953, the Indian Affairs Branch in Ottawa was advised that both the Alberta Treaty Indian trappers and the Canoe Lake Band had requested that "the Indian Department act on their behalf until final settlement was reached."[290] It would appear that they were unaware that the department had assumed that role more than a year earlier.

On September 29, 1954, the matter of compensation for Treaty Indians remained outstanding, and interim letters to DND had gone unanswered. The Deputy Minister of Citizenship and Immigration advised DND that the range area was now closed off and that the Indians were alleging that the Indian Affairs Branch had "been negligent in not protecting their interests."[291] By October 25, agreement was reached for an interim payment.

On October 27, 1954, Treasury Board authorized payment for equipment and the equivalent of one year's loss of income to Canoe Lake and four other Bands:

> The Board authorize payment of *interim compensation in the amount of $275,779* to the Department of Citizenship and Immigration on behalf of five bands of Treaty Indians who have lost trapping, hunting and fishing areas by reason of the establishment of the Primrose Lake Air Weapons Range *being $39,980 for loss of equipment and $235,799 representing the Department of Citizenship and Immigration's estimate of one year's loss of income by these bands;* chargeable to the Defence Forces

---

[290] W.G. Tunstead to H.R. Conn, 30 December 1953, NA, RG 10, vol. 7335, file 1/20-9-5 (ICC, Documents, at 438).

[291] Laval Fortier to C.M. Drury, 29 September 1954, NA, RG 10, vol. 7335, file 1/20-9-5 (ICC, Documents, at 470).

Appropriation for the Royal Canadian Air Force.[292]

The Indian Affairs Branch did establish a central fund to administer this money: the Primrose Lake Air Weapons Range Trust Account No. 440.[293] When Treasury Board authorized a second "interim compensation payment in the amount of $235,799 . . . on behalf of the Treaty Indians who have lost trapping, hunting and fishing areas"[294] in September 1955, this sum was put into the trust account as well.

There would be no more payments from DND until 1961. The second Treasury Board submission noted that "final consideration" to the Indian settlements would not be given until settlements were reached with non-Indians.[295] In June 1955, the Deputy Minister of Citizenship and Immigration agreed to extend an earlier undertaking that his department would not press for a final settlement for Treaty Indians until DND had reached agreement with the Government of Saskatchewan.[296] The settlement of compensation to Treaty Indians would take almost six more years.

---

[292] TB Minute 478149, 27 October 1954, NA, RG 55, vol. 20545, series A1 (ICC, Documents, at 491). Emphasis added.

[293] H.M. Jones to Chief Treasury Officer, Indian Affairs Branch, 19 November 1954, NA, RG 10, vol. 7335, file 1/20-9-5 (ICC, Documents, at 497).

[294] TB Minute 490634, 2 September 1955, NA, RG 55, vol. 20590, series A1 (ICC, Documents, at 764).

[295] Hughes Lapointe to Treasury Board, 25 August 1955, NA, RG 55, vol. 202, series A2 (ICC, Documents, at 742).

[296] C.M. Drury to Laval Fortier, 3 June 1955, NA, RG 10, vol. 7335, file 1/20-9-5 (ICC, Documents, at 647).

Interim Payments to Cold Lake

Headquarters proceeded cautiously in advancing any funds to Cold Lake, despite heated demands from Chief and Council.[297] On May 20, 1955, the Superintendent of Welfare, now J.P.B. Ostrander, wrote that the rehabilitation program for Cold Lake would have to be delayed, "until the total amount of compensation is known." In the meantime, the Indians were to be given welfare, "disregarding the fact that they have money on deposit."[298] This was later formalized as a program of "awaiting returns"[299] payments, chargeable to the compensation account.[300]

It is not clear that the people at Cold Lake knew the amount of money on deposit, either in total or standing to individual credits. Eklund noted "considerable discontent" when the amounts became known to Chief and Council through the office of the local Member of Parliament. He deemed it "inadvisable to reveal any amounts to claimants until a plan of administration had been completed." Nonetheless,

> Authority was immediately obtained to reveal to each claimant the total of his rehabilitation grant and our

---

[297] See, for example, Chipewyan Indian Band Council Resolution, 16 November 1954, NA, RG 10, vol. 7335, file 1/20-9-5 (ICC, Documents, at 496).

[298] J.P.B. Ostrander to R.F. Battle, 20 May 1955, NA, RG 10, vol. 7335, file 1/20-9-5 (ICC, Documents, at 636).

[299] This ungainly expression refers to what were originally intended to be short-term advances in anticipation of regular compensation payments. In time, "awaiting returns" came to refer to the monthly payments, generally equivalent to the welfare scale, which were paid to approved individual claimants.

[300] H.M. Jones to R.F. Battle, 7 June 1955, NA, RG 10, vol. 7335, file 1/20-9-5 (ICC, Documents, at 652).

> progress in interview then proceeded more rapidly. Each applicant [for rehabilitation] was informed of the amount of his grant less awaiting returns allowance for a ten-month period, less the amount already paid for loss of use of equipment and less the amount of store bills of each claimant for the past two years only.[301]

As this memorandum shows, there was pressure on the Cold Lake compensation from three sources. First, the so-called awaiting returns program of monthly payments was depleting the fund at a rate of $40,000 per year.[302] Second, there was pressure from local merchants and suppliers, which did not let up until long after the last payment in 1961, for government to ensure that their accounts were paid out of compensation moneys. Third, there was the rehabilitation program, which largely consisted of contracting for wells and land clearing and for the purchase of livestock and equipment. The Indian Affairs Branch exercised its own discretion in the management of the funds to address all three factors.

The monthly payments -- "awaiting returns" -- were instituted in response to a demand from Chief and Council.[303] There were subsequent protests that the amount, generally $25 per month, was too low,[304] but the Branch held to that figure for fear that a larger payment would discourage initiative.[305] The $25 figure was roughly equivalent to the prevailing welfare allowance for a small family and, at Cold Lake, these monthly allowances were distributed by way of departmental purchase orders or "vouchers."[306]

---

[301] R.I. Eklund to R.F. Battle, 25 July 1955, NA, RG 10, vol. 7335, file 1/20-9-5 (ICC, Documents, at 711-12).

[302] J.P.B. Ostrander to R.F. Battle, 4 October 1955, NA, RG 10, file 1/20-9-5 (ICC, Documents, at 785).

[303] See, for example, the 16 November 1954 Band Council Resolution, note 297 above.

[304] See, for example, R.I. Eklund to R.F. Battle, 25 July 1955, NA, RG 10, vol. 7335, file 1/20-9-5 (ICC, Documents, at 713).

The same voucher system was used for rehabilitation purchases. The intent of this approach was to prevent the people from having access to large amounts of cash, which might be used for other purposes, and to permit the Indian Affairs staff to exercise some control or suasion in relation to the nature of the purchases being made.

> Some applicants have requested equipment in the form of washing machines. In such cases, Mr. Knapp has taken into consideration the size of the family and the health of the housewife. Other claimants have requested cream separators.
>
> Old Age Pension[er]s, for the most part, are requesting cattle and farm implements that they intend to turn over to grandsons, etc., who are not on the list of claimants. Other pensioners are requesting repairs to homes, furnishings and their unexpended balances added to the monthly "allowance." Members of the band not included on [the] claim sheet are very disgruntled despite our advice to them that they will be considered for assistance from welfare appropriation next year.[307]

The question of debts to merchants and suppliers would preoccupy Indian

---

[305] See, for example, H.M. Jones to H.R. Conn, 9 March 1956, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 872).

[306] Cold Lake Transcript, vol. VIII, at 973-75 (Stan Knapp).

[307] R.I. Eklund to R.F. Battle, 25 July 1955, NA, RG 10, vol. 7335, file 1/20-9-5 (ICC, Documents, at 713).

Affairs staff greatly.[308] It was, of course, the interruption of their fur and fish income that had forced the people at Cold Lake into the situation of having debts they could not repay from their "Indian bank."[309] The department proposed and implemented an informal program of paying store debts incurred between August 1954, when the range was closed, to June 1955, when the monthly allowances commenced.[310] These accounts, the total amount of which does not appear in the record of this inquiry, were also paid out of the compensation account.

The problem of store accounts was aggravated by the imposition of the voucher system on rehabilitation purchases. Despite regular reminders to suppliers that accounts would not be paid unless previously authorized by Indian Affairs, merchants routinely ignored that directive. "There appears to have been a complete disregard for Agency authority, and I think this more than anything else wrecked the Cold Lake Rehabilitation Project."[311]

The limits of the discretion Indian Affairs could exercise in controlling these expenditures were a recurring source of concern.[312] While the official position was that the Branch could do nothing more than "offer counsel and advice to the

---

[308] See, for example, R.F. Battle to "All Superindendents," 22 December 1955, and R.F. Battle to "Merchants," 22 December 1955, both NA, RG 10, vol. 7336, file 1/20-9-5 (ICC, Documents, at 822, 831).

[309] Cold Lake Transcript, vol. III, at 438 (Eva Grandbois).

[310] R.F. Battle to S.C. Knapp, 31 August 1955, NA, RG 10, vol. 7335, file 1/20-9-5 (ICC, Documents, at 747).

[311] R.F. Battle, Memorandum, 1 January 1957, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 955).

[312] See, for example, H.M. Jones to D.H. Christie, 1 March 1957, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 991). See also Cold Lake Transcript, vol. VIII, at 1031 (Stan Knapp).

Indians,"[313] the desire to do more than this put the local agents in conflict with the Indians as well. There was a fear that individual Indians would challenge the department's control of their compensation moneys.

> As you know, we are treading on thin ice and we only yield when we feel the Indian has reached the point where he is going to see a lawyer and this we must prevent at all costs.[314]

All these factors were being debated while a significant amount of money was being expended. As noted above, none of the money from the interim payments began to flow to Cold Lake until the end of June 1955. By the end of July 1957 virtually all of it was gone. This was the state of the account for Cold Lake as of the latter date.

Cold Lake Distribution as of July 1957

Interim Payments ($)	Total Monthly Allowance ($)	"Rehabilitation" Payments ($)	Balance ($)
$339,450	$80,000	$254,890	$4,560

The balance outstanding stood to the individual accounts of 107 members at Cold Lake, an increase of three from the original 104 approved claimants. Of those 107 accounts, one had a balance of more than $1000, 10 had balances of more than $100, 23 had balances of more than $10, 99 had balances of more than one dollar, and eight were in deficit.

---

[313] J.H. Gordon to H.M. Jones, 17 December 1956, NA, RG 10, vol. 7335, file 1/20-9-5 (ICC, Documents, at 953).

[314] S.C. Knapp to R.F. Battle, 15 June 1956, NA, RG 10, vol. 7335, file 1/20-9-5 (ICC, Documents, at 931). See also Cold Lake Transcript, at 972-73, 976, 1021 (Stan Knapp).

This situation gave senior officials of the Indian Affairs Branch cause to reconsider their entire approach.

> Consequently, it has been decided that no representations will be made to the Department of National Defence for further funds, at least until there is some assurance that the money would be put to good use in a rehabilitation program.
>
> . . .
>
> If, after a year of earnest endeavour under stricter supervision than has been possible to date, a substantial proportion of the [Cold Lake] band shows real progress, the department will give consideration to seeking a further compensation payment.[315]

At this time, Chief Harry Janvier wrote to the Director of the Indian Affairs Branch.

> We [would] like to bring to your attention that when the bombing area was taken away from us, we were promised that the rehabilitation money would be paid every year from five to ten years. Up to now we have received at the Cold Lake Indian Band less than $500,000 in 1955 and 1956.
>
> But what is that sum for an area that was bringing the Indians an average [total] revenue varying from $50,000 to $70,000 a year in furs, wild meats and

---

[315] J.H. Gordon to R.F. Battle, 18 January 1957, DIAND, Alberta Region files, (ICC, Documents, at 961).

> fishing?[316]

The Director, Colonel Jones, responded in the following terms:

> With regard to your statement that you were promised a payment every year from five to ten years, an examination of the record indicates that no such promise was authorized and I am assured by field officers that none was made, although it was suggested that something about five years' revenue could be considered a fair rate of compensation. If you will take your highest figure of $70,000.00 as the annual income and compare it to the payments made to date, you will find that your band has already received compensation in excess of five years' income. Compensation payments to date amount to $370,975.00 [including $31,000 for loss of equipment] whereas five years' income at your highest estimate works out at $350,000.[317]

We note that this letter is equivocal, in the sense that it confirms the five- or ten-year discussion while denying that Indian Affairs officials had made any promise in that regard. Worse, the letter is misleading since the proposal before DND at the time it was written was for ten years' compensation to Cold Lake based on annual losses of fur, fish, and game of $169,725, not $70,000.

There were, understandably in these circumstances, several versions in the community about the term over which compensation would be paid.

---

[316] Chief Harry Janvier to H.M. Jones, 13 August 1957, NA, RG 10, vol. 7334-36, file 1/20-9-5 (ICC, Documents, at 1056).

[317] H.M. Jones to Chief Harry Janvier, 30 September 1957, NA, RG 10, vol. 7336, file 1/20-9-5 (ICC, Documents, at 1072-73).

> One man, by the name of Eckland [Eklund], heard about the closure and he was there when we got money. He told us we will get paid for five years. They paid us for two years and then a year later the Range was closed to us.[318]
>
> . . . Simon Marten

> We understood that this was supposed to be for a twenty-year deal, is the way. I hear a lot of old people mention that twenty-year bit, but everything was so oral; there was nothing put on paper when we were dealing with Indian Affairs. Indian Affairs -- everything we did, we went through Indian Affairs. They were the ones that were negotiating for us.[319]
>
> . . . Ernest Ennow

> They thought they were signing another interim payment because there were negotiations -- from what I gather from other elders, the promise was for -- the Department of National Defence wanted the land for twenty years only and after twenty years there would be further negotiations. And then another twenty years has elapsed since the time that was mentioned. It will be forty years now.[320]
>
> . . . Ernest Ennow

> It sound[ed] like it for me, it would be returned to me, the land, after twenty years.[321]
>
> . . . Pierre Herman

---

[318] Cold Lake Transcript, vol. I, at 75 (Simon Marten).

[319] Cold Lake Transcript, vol. I, at 89 (Ernest Ennow).

[320] Cold Lake Transcript, vol. I, at 102 (Ernest Ennow).

[321] Cold Lake Transcript, vol. I, at 128 (Pierre Herman).

> And as far as I know, when my husband went to the meetings, he always said that they told them -- like *the Indian Department told them that this was only for twenty years that they were leasing this land.* And so they, in a way, some of them thought that was okay, you know.
>
> They didn't get very much, but they figured, well, maybe that isn't so bad if it's only for twenty years. But this is forty years.[322]
>
> . . . Nora Matchatis

> The quit claim, I didn't like to sign it first time but according to some hearings -- I won't say -- it was told to me but they said it was for twenty years.
>
> So, you know, when you are getting a little bit of money here for twenty years you feel not too bad. You know the way I felt anyway, it was going to continue for twenty years payment, that's okay. But we didn't.[323]
>
> . . . Victor Matchatis

> And, then, we were told we were going to get five years. So, okay, we got that first and the second and then a third. I guess that must have been that final payment ...
>
> . . .
>
> COMMISSIONER LAFORME: Did your father ever tell you anything about what was happening with the range, what the agreement was. How many years compensation would be paid, things like that?
>
> MRS. MARTIN: Well, the only thing he told me was, they were leasing the land for twenty years and that the Air Force were coming in and they were going to build a bombing range. This is -- I don't know why but this is the bombing range that was told to us.

---

[322] Cold Lake Transcript, vol. II, at 197-98 (Nora Matchatis). Emphasis added.

[323] Cold Lake Transcript, vol. II, at 242 (Victor Matchatis).

> So, he says, well for twenty years -- after twenty years if the Air Force left, then the Primrose Lake -- the Primose area would be given back to us. So I assumed all this time that was what was going to happen.[324]
>
> . . . Mary Martin
>
> The way the trap lines were taken -- I was not always present at any meetings, but I know a little bit about it. Every twenty years, I heard at a band meeting at the band hall that that was said. *Twenty years was the length of time that the bombing range was loaned to them. After twenty years, if the land continued to be used, we were supposed to get paid again.* That was the agreement made at the time. That didn't happen even then. That was the way that we were treated.[325]
>
> . . . Louis Janvier
>
> Anyway, at that time when this started, I was the only one that was in the meeting at that time about the bombing range -- I was at that meeting. Twenty years lease, in twenty years' time, we were supposed to be getting paid and some money -- or we get the land back or the money, that's what they promised us. That's how they made a deal, I think. I'm pretty sure that's the way I understood, that's how it started. I was there.[326]
>
> . . . Toby Grandbois

In March 1958, long after the trust account had been depleted, Chief Harry

---

[324] Cold Lake Transcript, vol. II, at 270, 274 (Mary Martin).

[325] Cold Lake Transcript, vol. III, at 317-18 (Louis Janvier). Emphasis added.

[326] Cold Lake Transcript, vol. III, at 407 (Toby Grandbois).

Janvier wrote again to Colonel Jones:[327]

> We sincerely and humbly urge the Indian Department to attempt and obtain a final agreement with the Department of National Defence, but not on the basis of a three or four year basis, but *one based on a livelihood for a livelihood,* and if a time limitation must be established, we fail to see how it could be anything less than a 15 or 20 year income basis.
>
> . . .
>
> [W]e do feel that a qualified sociologist should be appointed to plan our rehabilitation, and this would undoubtedly take away from the agent certain work for which he is not qualified, nor has time to do properly, and would be to our best interest in any case, and at the same time assuring that there would be no dissipation of monies, machinery, or otherwise.
>
> . . .
>
> [I]t is imperative that immediate arrangements be made in order that we know where we are going and what we can expect to receive in the future and the method or methods with which are problems are to be dealt with.[328]

His "interesting and constructive letter" was acknowledged by Colonel Jones,[329] but never answered. By this time, Indian Affairs was heavily involved in attempting to advance the MacKay proposal as the basis for compensation from DND.

---

[327] The background of this letter was described to the panel: Cold Lake Transcript, vol. II, at 196-97 (Nora Matchatis).

[328] Chief Harry Janvier (and Council) to H.M. Jones, 25 March 1958, NA, RG 10, vol. 7336, file 1/20-9-5 (ICC, Documents, at 1147-49).

[329] H.M. Jones to Chief Harry Janvier, 29 April 1958, NA, RG 10, vol. 7336, file 1/20-9-5 (ICC, Documents, at 1156).

Negotiating a Final Payment within Government

The likelihood of further compensation was fading. The previous year, DND had become frustrated at the length of time it was taking to settle all claims, including those of Treaty Indians, and had developed its own proposal.

That proposal took the position that compensation as between Métis and Indians ought to be "more or less equal" since the distinction between the two groups appeared to DND to be an artificial one "not necessarily noticeable in the field." Futhermore, the Métis in northern Saskatchewan were unsatisfied with the negotiated compensation and "refused to accept their cheques contending that by comparison [with Indian compensation] they are much too low."[330] To resolve the "stalemate," it was recommended:

> 1. That the settlements with the Metis be doubled, making the average compensation approximately $750.00 each, payable in two equal payments . . .
>
> 2. *That the Indian Affairs Branch be prevailed upon to take a realistic view of the situation and agree to complete settlement of compensation accepting as total payment the $511,598.00 already paid.*
>
> The adoption of this suggestion will show some advantage to the Treaty Indians over the Metis, but not to such an extent as to cause undue difficulties.
>
> 3. *That any funds deemed necessary for the carrying out of welfare work or experimental rehabilitation plans for the Treaty Indians be provided by special vote of Parliament quite divorced from the activities of DND.*[331]

---

[330] F.D. Millar to C.F. Johns, National Defence, 5 February 1957 (ICC, Documents, at 973-75). Emphasis added.

[331] See note 330. Emphasis added.

The above memorandum noted that moneys had already been advanced to the Indian Affairs Branch "as a partial payment to the Treaty Indians," but this acknowledgement did not affect the recommendation that no further compensation be paid. This proposal was not communicated to Indian Affairs. Instead, for the first time, the basis of Indian Affairs' valuation of losses in the MacKay proposal was questioned.

When the Director of the Indian Affairs Branch, H.M. Jones, became aware of this challenge, he prepared a full report for his Deputy Minister. His memorandum sets out a detailed basis for the original calculations for the loss to Indians of game and fish resources. It estimates that a competent hunter with nine dependant children could "easily" obtain 3658.5 lbs of meat and fowl, as well as 2400 lbs of fish, annually having a total value of $2000.[332]

As a possible compromise of the original calculation, the Director suggested that the MacKay proposal be revised to provide four years' compensation for Beaver Lake, Heart Lake, and Goodfish Lake (instead of five years'), and eight years' compensation for Cold Lake and Canoe Lake (instead of 10 years'). This would anticipate a final settlement with DND for a further payment of $1,360,846. An alternative means of payment was also suggested:

> Consideration might be given, as a means of resolving the embarrassment of the Department of National Defence in dealing with compensation claims by Métis and non-Indians, *to providing a lump sum grant to be administered by the Department of Citizenship and Immigration for the use and benefit, and to assist in the rehabilitation of Indians* who have lost hunting, trapping

---

[332] H.M. Jones to Laval Fortier, 3 April 1957, NA, RG 10, vol. 7335, file 1/20-9-5 (ICC, Documents, at 1009-15).

> and fishing income by reason of the establishment of the Primrose Lake Air Weapons Range.[333]

The Deputy Minister of Citizenship and Immigration responded to this proposal as follows:

> I am informed that the fact that payments have been made to our Department in the past has created some difficulty for the Department of National Defence in coming to an agreement with non-Indians. Therefore, it has been decided that no further consideration would be given to the claims of Indians, and that no further payments would be made until settlement has been reached on the claims of non-Indians.[334]

During this further period of indulgence granted to DND, which was to last more than a year, that department did proceed to secure Treasury Board and Cabinet approval for a more generous settlement with 112 Métis, totalling $92,500, which was estimated to provide average individual payments of $850.[335] The issue of compensation to Treaty Indians was not brought forward by Indian Affairs again until August 1958. A memorandum to the Deputy Minister notes:

---

[333] H.M. Jones to Laval Fortier, 3 April 1957, NA, RG 10, vol. 7335, file 1/20-9-5 (ICC, Documents, at 1012). Emphasis added. This wording was suggested by the legal adviser: see D.H. Christie to H.M. Jones, 26 March 1957, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 1000).

[334] Laval Fortier to H.M. Jones, 12 April 1957, NA, RG 10, vol. 7336, file 1/20-9-5 (ICC, Documents, at 1018).

[335] F.R. Miller, Deputy Minister, National Defence, to Governor General in Council, 22 May 1957, NA, RG 10, vol. 7334-36, file 1/20-9-5 (ICC, Documents, at 1035); TB Minute 518026, 27 May 1957, NA, RG 2, vol. 1943, series 1 (ICC, Documents, at 1038); TB Minute 529193, 29 March 1958, NA, RG 2, series 1 (ICC, Documents, at 1142).

> You will recall that negotiations were broken off with the Department of National Defence in order not to cause embarrassment in their dealings with non-Indian groups.
>
> I would be pleased, if you wish, to prepare the necessary submission to the Department of National Defence.[336]

The issue was also brought up in the House of Commons by the former Minister of Citizenship and Immigration, Mr. Pickersgill, by way of a question to his successor, the Honourable Ellen Fairclough.

> I am afraid it was a terrible mess that I left her to settle, because the Minister of National Defence was not showing the generosity towards the Indians which I thought he should show and we never were able to reach a settlement.[337]

The actual question posed at that time was whether the Minister agreed with the general proposition that her Department would seek compensation whenever injury was done to "an Indian trap line or an Indian's trapping rights." She did agree.

In September 1958 DND threw down the gauntlet.

> As you may be aware, this department finds it most difficult to regard, as fair and reasonable compensation, the figure of $2,331,044.98 computed by your department with respect to these Treaty Indians and I can find no record of the formal acceptance of this sum as the basis of a

---

[336] H.M. Jones to Laval Fortier, 8 August 1958, NA, RG 10, vol. 7336, file 1/20-9-5 (ICC, Documents, at 1175).

[337] House of Commons, *Debates* (28 August 1958) at 4255 (ICC, Documents, at 1179).

> final settlement in the matter. *While we are prepared to recognize, within reasonable limits, the special position of Treaty Indians as Wards of the Crown*, it is the opinion here that payments to the Treaty Indians or to your department on their behalf, should be more in line with the compensation payments made to the Metis and white residents of the area for the loss of similar rights.
>
> . . .
>
> To date, two payments totalling $511,598.00 have been made to your department on behalf of the five Indian Bands. This sum is the equivalent of $978 for each man, woman and child, or *approximately $3,900 for each income-earning male*[338] . . . [These amounts] are in excess of the average settlement of compensation made with the Metis and white residents who had similar interests in the area.
>
> In the circumstances, I would ask that you give serious consideration to the acceptance of the sum of $511,598.00 previously paid as the full and final settlement of compensation to the Treaty Indians who have been affected by our Range operations.[339]

Citizenship and Immigration responded to this memorandum by preparing a submission to Cabinet on the issue,[340] but it was referred back to Treasury Board,[341] where officials sided with DND.[342] On January 5, 1959, the Chairman reported to Cabinet the Board's recommendation that no further compensation be paid and that "any further assistance to the Indians should be considered on its merits . . . and provided for out of the appropriations of the Department of Citizenship and Immigration."[343]

---

[338] This calculation overstates the situation at Cold Lake, where 107 trappers and fishermen shared $370,975 in compensation, including compensation for cabins and equipment. This would average $3467 each.

[339] F.R. Miller to Laval Fortier, 30 September 1958, NA, RG 10, vol. 7336, file 1/20-9-5 (ICC, Documents, at 1197-98).

[340] Memorandum to Cabinet, 26 November 1958, NA, RG 10, vol. 7336, file 1/20-9-5 (ICC, Documents, at 1212.1).

Minister Fairclough decided to resubmit the issue to Cabinet based on a more detailed memorandum setting out her department's analysis of the issue.[344] Again, the matter was referred back to Treasury Board for resolution.[345] A year later, it was still unresolved.[346]

To prepare for further discussions with Treasury Board, Colonel Fortier, the Deputy Minister, met with senior officials of the Indian Affairs Branch and posed four questions to them:

> 1. Did or did not the Indians on whose behalf compensation was claimed enjoy an exclusive right, under provincial license, either through individual traplines in Alberta or in group areas in Saskatchewan, to trap in the

---

[341] W.E.D. Halliday to Laval Fortier, 22 January 1959, NA, RG 10, vol. 7336, file 1/20-9-5 (ICC, Documents, at 1233).

[342] J.A. MacDonald to Treasury Board, 24 December 1958, NA, RG 55, file 904 (ICC, Documents, at 1224).

[343] The Hon. Donald M. Fleming, Minister of Finance, to Cabinet, 5 January 1959, NA, RG 55, file 904 (ICC, Documents, at 1231).

[344] The Hon. E. Fairclough to Cabinet, 25 February 1959, NA, RG 10, vol. 7336, file 1/20-9-5 (ICC, Documents, at 1246).

[345] Record of Cabinet Decision, 14 April 1959 (ICC, Documents, at 1265.1).

[346] See, for example, D.J. Hartt to H.A. Davis, Treasury Board, 5 April 1960, NA, RG 10, vol. 7336, file 1/20-9-5 (ICC, Documents, at 1328).

> Primrose Lake area?
>
> The answer to this question was, in the opinion of the departmental officers present, clearly in the affirmative.
>
> 2. Did or did not some of the Indians on whose behalf compensation is claimed, as recorded in the detailed lists, enjoy under provincial license the right to fish commercially in this area?
>
> Again an affirmative answer was given.
>
> 3. Did or did not the Indians prior to the creation of this bombing range have a legally enforceable right to hunt and fish for food in this area?
>
> The answer to this question was again in the affirmative by virtue of Section 12 of the Natural Resources Transfer Agreement Acts as defined by Appeal Court decisions in both Provinces.
>
> 4. Col. Fortier then posed the question whether, since the creation of the range, any of the rights enumerated above are now enjoyed by the Indians involved in this claim?
>
> The answer to this question was clearly in the negative.[347]

Treasury Board isolated three aspects of the claim advanced by Citizenship and Immigration:

- whether the Indians had a legally enforceable claim;
- whether the figures provided by Citizenship and Immigration were justifiable; and
- whether the need for economic rehabilitation should be considered as part of an appropriate amount for compensation.

---

[347] Indian Affairs Branch Memo to File, 30 September 1959, NA, RG 10, vol. 7336, file 1/20-9-5 (ICC, Documents, at 1288-89).

On the first issue, legally enforceable claims, the Deputy Attorney General advised that the Indians' rights were limited to hunting, fishing, and trapping for food all seasons of the year on unoccupied Crown lands, as provided in section 12 of the relevant Natural Resources Transfer Agreements.[348] When the lands became occupied by the air weapons range, these protected rights "ceased to operate." There was, in the writer's opinion, "no legal right to compensation."[349] There was no reference to the treaties in this opinion.

Indian Affairs continued to argue, however, that the claim was at least a "strong, equitable one."[350] Whether or not the Indians could sue the Crown, their "unrestricted right to hunt and fish and trap for food throughout the area" had been "completely abrogated."[351] Adequate reparations were needed because "the Federal Government has completely disrupted their way of life and forced the adoption of new vocations for which they were not prepared."[352]

On the second issue, the calculation of the loss to Indians, Treasury Board eventually agreed that Indian Affairs' calculation of the annual loss of fish and game used for food and other domestic purposes was reasonable. In addition, "[t]he figures for furs, fish and game sold are matters of record and therefore need not be questioned."[353]

---

[348] *Constitution Act, 1930*. See discussion of the Resources Transfer Agreements at 211-15 below.

[349] Deputy Attorney General to G.G.E. Steele, Treasury Board, 2 February 1960, NA, RG 10, vol. 7334-36, file 1/20-9-5 (ICC, Documents, at 1317-18).

[350] See, for example, Laval Fortier to D.H. Watters, 25 July 1959, NA, RG 10, vols. 7224-36, file 1/20-9-5 (ICC, Documents, at 1278-79).

[351] H.M. Jones to J.L. Fry, Treasury Board, 19 October 1959, NA, RG 55, file 904 (ICC, Documents, at 1295).

[352] H.M. Jones to G.F. Davidson, Deputy Minister, Citizenship and Immigration, 8 April 1960, NA, RG 10, vol. 7336, file 1/20-9-5 (ICC, Documents, at 1333).

It was the third issue, economic rehabilitation contrasted with compensation, which was the real source of dispute between DND and Indian Affairs. DND wanted to accomplish two things: treatment of the economic loss in a manner similar to loss of business opportunity, and parity among whites, Métis, and Indians who were compensated for their dislocation from the range.[354] Quite simply, DND did not want a compensation package for Indians which would reopen the other negotiations or cause resentment among the other groups.[355]

Indian Affairs, on the other hand, saw the interim payments as direct compensation for loss of income and food resources which could not be replaced.[356] While some of this compensation could have been available for economic rehabilitation, that was a larger issue which had not been factored into the original calculation of annual losses.[357] Even so, the fact that such a program was necessary was directly attributable to the dislocation of Treaty Indians from the range and should, in the view of the department, have been a proper charge against the DND budget.

---

[353] Harry Hodder to G.G.E. Steele, Treasury Board, 1 June 1960, NA, RG 55, file 904 (ICC, Documents, at 1362).

[354] See, for example, R.G. MacNeill to Minister of Finance, 10 December 1958, NA, RG 55, file 904 (ICC, Documents, at 1215).

[355] F.D. Millar to C.F. Johns, National Defence, 5 February 1957 (ICC, Documents, at 973-74).

[356] Indian Affairs Branch, Memo to File, 30 September 1959, NA, RG 10, vol. 7336, file 1/20-9-5 (ICC, Documents, at 1286-87).

[357] D.M. MacKay to Laval Fortier, 23 April 1952, NA, RG 10, vol. 7334 (ICC, Documents, at 349).

> [Citizenship and Immigration] pointed out . . . that DND had, without any significant notice, taken from the Indians at one swipe rights which they would otherwise have only lost over a period of years.[358]

Treasury Board remained sympathetic to the DND point of view. At length, it was agreed within government that DND would make one further payment -- equivalent to one year's compensation, or $235,799 -- and leave the issue of long-term economic rehabilitation to Indian Affairs for resolution.[359]

Negotiating a Final Payment with the Indians

By July 1960 the only question within government was whether the Indians would settle for one more payment. Treasury Board wrote to the Deputy Minister of Citizenship and Immigration:

> As this matter was originally referred to the Treasury Board by Cabinet, we now intend to re-submit the case to the Board suggesting that the proposed settlement agreed to by the Department of National Defence be recommended to Cabinet for approval. However, before we do this *it would be desirable to know whether or not your Department feels reasonably sure that one more payment of $235,000 as compensation will be acceptable to the Indians so that they will agree to sign a release to the land.*
>
> I should also point out at this time that we feel that *any further aid for these Indians should be an integral part of your Department's regular program of*

---

[358] D.J. Hartt to D.W. Franklin, 14 April 1960, NA, RG 55, file 904 (ICC, Documents, at 1338).

[359] H.A. Davis to J.A. MacDonald, 19 July 1960, NA, RG 55, file 904 (ICC, Documents, at 1377).

> *rehabilitation.*[360]

When the Minister, the Honourable Ellen Fairclough, was advised of this plan, she noted on the memorandum:

> It seems to me the Indians have had a raw deal on this matter and we should look after their interests.[361]

Her department set about organizing meetings with the Bands to put this settlement proposal to them. There was, however, concern that a plan for economic rehabilitation should be presented at the same time and included in the Citizenship and Immigration estimates for the 1961-62 budget.[362] The department deferred this subject on the basis that the Indians should be involved in such planning and that it would take considerable time before this could be done.[363]

Colonel Jones wrote to the regional supervisor in Alberta, L.C. Hunter, instructing him to organize a meeting at Cold Lake.

> I would like you to arrange meetings with the four Alberta Bands concerned (Cold Lake, Beaver Lake, Heart Lake, and Goodfish Lake), to ascertain if they are prepared to accept this proposal. If they are agreeable,

---

[360] G.G.E. Steele to G.F. Davidson, 22 July 1960, NA, RG 10, vol. 7336, file 1/20-9-5 (ICC, Documents, at 1380). Emphasis added.

[361] G.F. Davidson to the Hon. E. Fairclough, 29 July 1960, NA, RG 10, vol. 7334-36, file 1/20-9-5 (ICC, Documents, at 1384).

[362] H.M. Jones to G.F. Davidson, 18 August 1960, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 1400).

[363] H.M. Jones to G.F. Davidson, 18 August 1960, NA, RG 10, vol. 7336, file 1/20-9-5 (ICC, Documents, at 1402).

> will you please endeavour to obtain written releases from them to that effect. These releases will be required before we will be in a position to proceed with a submission to the Treasury Board to secure authority for the payment.
>
> If the Indians will not accept this proposal by National Defence, there appears to be little or no hope that the proposed payment or any further compensation payments could be obtained from National Defence.
>
> It has been made clear to us that, in the view of Treasury Board, any additional assistance to the Indians of this area (beyond the proposed payment of $235,000) should be a part of the regular governmental programs of welfare assistance and economic development, which would be met from the appropriations of this Department. This matter of further expenditures for the rehabilitation of the Indians is for your own information.[364]

This meeting was held at Cold Lake on September 14, 1960, the same day that a similar meeting was going on at Canoe Lake. The minutes of the Cold Lake meeting have been provided to us.

> Mr. Hunter: . . . After talking over, back and forth, the Department of National Defence told Indian Affairs that they are willing to make another payment providing they sign an agreement showing full settlement. *I don't know the amount of money in cents but it will not be less than the 1956 payment. This time the money will be turned over to you with no strings. We will not tell you how to spend it . . .*
>
> Before any cheques are given we must agree that this is final -- the end. You will be asked, when you get your cheque, to sign an agreement which is a legal paper

---

[364] H.M. Jones to L.C. Hunter, 26 August 1960, NA, RG 10, vol. 7336, file 1/20-9-5 (ICC, Documents, at 1404).

> saying this is all. Are there any questions?
>
> . . .
>
> Dominic Jacko: We were promised at least five payments. I don't mind so much but want to know.
>
> Mr. Hunter: I was not here at the time but can truthfully say that was not the intention of the Department of National Defence. They might have thought that.
>
> . . .
>
> Chief Pierre Metchewais: Speaks to people before a vote is taken. The meeting of last week agreed and we should sign. *We need the money in the worst way* so when we take the vote we should support the agreement.
>
> . . .
>
> Vote taken -- All persons present voted in favor of accepting final payment.[365]

These minutes are recorded on just over two legal-size pages, type-written. It was, however, Mr. Knapp's recollection that the meeting had taken up several hours and was quite heated.[366] The result, however, was an indication of support for the proposal, and there is a list of signatures on a document recording their agreement to "not less than the [payments] which we received in 1956, as the last and final payment for loss of hunting, fishing and trapping rights in the area known as the Primrose Lake Air Weapons Range."[367] There was some discussion before this Commission about the wording of this document and the signatures appended to it, but nothing in our findings turns on these points and government does not rely on this document.

---

[365] L.C. Hunter to Indian Affairs Branch, 14 September 1960, NA, RG 10, vol. 7336, file 1/20-9-5 (ICC, Documents, at 1409-10). Emphasis added.

[366] Cold Lake Transcript, vol. VIII, at 953, 981 (Stan Knapp).

[367] Cold Lake Indian Band to L.C. Hunter, 14 September 1960, NA, RG 10, vol. 7336, file 1/20-9-5 (ICC, Documents, at 1416).

The Intent of the Final Payment

As the paperwork was being prepared to obtain Cabinet approval of the plan, one Indian Affairs official noted that the intent was to obtain a release from the Indians in favour only of the Department of National Defence. "Nowhere in the correspondence is there any suggestion that the Minister [of Citizenship and Immigration] had or would agree to accept such payment as being in full and final settlement of the Indian claim . . . [A] formal release would have to be executed by each individual Indian before the Department of National Defence was absolved of their responsibility in the question."[368]

DND acknowledged this concern by saying, "we had hoped [this] would serve as a release of this department by your department." The letter goes on to add that if Indian Affairs officials "consider that some form of final release [from the Indians] is necessary, and this may well be the case, you could of course do so."[369] On the advice of its own legal adviser, Indian Affairs abandoned the idea of a formal release of rights. It substituted, however, a "form of receipt being acknowledgment by the Indian that he has received a Dominion of Canada cheque in full and final settlement of his claim."[370] This receipt would later be interpreted as releasing all government departments from all further financial obligations.

---

[368] R.F. Battle to H.M. Jones, 3 November 1960, NA, RG 10, vol. 7336, file 1/20-9-5 (ICC, Documents, at 1457).

[369] E.B. Armstrong, Deputy Minister, National Defence, to G.F. Davidson, 4 November 1960, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 1462-63).

[370] R.F. Battle to H.M. Jones, 18 November 1960, NA, RG 10, vol. 7334-36, file 1/20-9-5 (ICC, Documents, at 1479).

The actual Treasury Board submission, signed by the Ministers of Citizenship and Immigration and National Defence, confirms that the final payment was intended to absolve only DND from further responsibility, acknowledging the role of Indian Affairs as having acted on behalf of the Indians in the matter.

> [I]t has been agreed that a final settlement of the claim on the basis of three years income would be a satisfactory solution of the compensation issue and would *leave any consideration of long term rehabilitation as a separate issue which would not concern the Department of National Defence.*
>
> . . .
>
> The undersigned therefore have the honour to recommend that authority be granted for a further payment by the Department of National Defence to the Indian Affairs Branch of the Department of Citizenship and Immigration of *$235,799 such payment to be accepted by Citizenship and Immigration in trust on behalf of the Treaty Indians in the Primrose Lake area* and as being *in full and final settlement of all claims made on behalf of the Treaty Indians* with respect to loss of income and all other claims of any nature that have been made or may be made on behalf of the Treaty Indian Bands *by the Department of Citizenship and Immigration* arising from the taking over by the Department of National Defence of the lands known as the Primrose Lake Air Weapons Range."[371]

The proposal supporting Treasury Board Minute 573254, dated December 2, 1960, includes the above wording, with a marginal note added: "This settles DND involvement once and for all."[372] The formal minute, as approved by Cabinet, is only one paragraph long and adopts the wording that payment is settlement on behalf of any claims that may be made by Citizenship and Immigration "on behalf of the the Treaty Indian Bands."[373]

---

[371] The Hon. E. Fairclough and the Hon. D.S. Harkness, Minister of National Defence, to Treasury Board, 25 November 1960, NA, RG 2 (ICC, Documents, at 1484). Emphasis added.

We conclude that the intent of this accommodation between the two government departments was to relieve the Department of National Defence, and not the Government of Canada generally, from any further responsibility to compensate Treaty Indians dislodged or otherwise affected by the Primrose Lake Air Weapons Range.

Delivering the Final Payment

The cheques for payment to the members of Cold Lake were forwarded to Edmonton on January 11, 1961, together with a supply of "receipt forms." The following instructions were given:

> When the cheques are issued to these individuals or as soon as possible thereafter, each person should be interviewed to determine how he proposes to become better established or, where necessary, re-established and how he intends to use the funds to further this end. In this connection, the Department's function is that of the counsellor and advisor but the following points should be made very clear:

---

[372] D.J. Hartt to H.A. Davis, NA, RG 10, vol. 7336, file 1/20-9-5 (ICC, Documents, at 1506-07).

[373] TB Minute 573254, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 1521). An earlier version of this minute stated that payment would be made to Citizenship and Immigration "to be held in trust for the Treaty Indians" (ICC, Documents, at 1520). The quoted words were subsequently deleted.

> 1. As citizens and as members of the community, it is essential that the Indians establish and improve their credit ratings. Consequently they should take immediate steps to pay their debts from the funds now available to them.
>
> 2. The payments they receive will, of course, be taken into consideration when examining applications for relief assistance during subsequent months. Those receiving substantial payments should not require assistance at least for the remainder of the current winter unless the funds are used for payment of debts or for some constructive purposes such as the purchase of building materials, farming equipment, etc.
>
> 3. *The manner in which they utilize these funds and the proportion they devote to a personal rehabilitation program will be closely watched and will have an important bearing on their eligibility for future assistance under regular programs of the Department related to agriculture, ranching, placement, and other economic development projects.*
>
> . . .
>
> The Department has an obligation to notify several persons of the fact that a further payment [is] actually being made, and for that reason you are requested to hold the cheques at your office until further notice from this headquarters.[374]

The notification referred to was intended to make local Members of Parliament and merchants aware of the fact the Cold Lake claimants would be coming into funds.[375]

The actual delivery of the cheques was made at the Toronto Dominion Bank in Grand Centre, the town adjacent to the air base and lying between the southern and northern reserves of the Cold Lake First Nations. Three tables were set up, each manned by an Indian Affairs employee. Despite the earlier promise that payment would be made directly to individual with "no strings attached,"[376] Indian Affairs still attempted to have payments put into a trust account which it would administer. A petition was prepared for that purpose, but no one signed it.[377]

---

[374] R.F. Davey to L.C. Hunter, 11 January 1961, NA, RG 10, vol. 7336, file 1/20-9-5 (ICC, Documents, at 1555-57). Emphasis added.

[375] R.F. Battle to L.C. Hunter, 20 January 1961, NA, RG 10, vol. 7334-36, file 1/20-9-5 (ICC, Documents, at 1563).

The three officials present at the bank on January 26, 1961, were Stan Knapp, superintendent of the Saddle Lake Agency, Ivor Eklund, fur supervisor, and Murray Sutherland, superintendent of welfare for the Alberta region. Knapp and Sutherland worked as a team filling out the receipt forms, while Eklund sat with a bank employee reviewing postdated cheques that had been issued to merchants and assisting with the opening of bank accounts.[378]

The form of receipt -- also known as the quit-claim -- was the same as that used at Canoe Lake.[379]

On January 26 and 27, 80 of these forms were completed at the bank in Grand Centre. Mr. Knapp's report of those sessions, completed at the time, also indicates considerable by-play having to do with the issue of storekeepers' accounts and postdated cheques, in respect of which several stop payments were made because of disputes over the amounts owing.[380]

---

[376] See minutes of 14 September 1960 meeting at note 365 above.

[377] L.C. Hunter to Indian Affairs Branch, Ottawa, 9 January 1961, NA, RG 10, vol. 7334-36, file 1/20-9-5 (ICC, Documents, at 1541). The actual petition is in ICC, Documents, at 1536-39.

[378] S.C. Knapp to Regional Supervisor, Alberta, 6 February 1961, NA, RG 10, vol. 7334-46, file 1/20-9-5 (ICC, Documents, at 1578-81).

[379] See note 159 above.

INTERVIEW SHEET
REGARDING COMPENSATION ARISING FROM THE ESTABLISHMENT OF THE PRIMROSE LAKE AIR WEAPONS RANGE

__________ ______, 19__
Place Date

I ________________ No. ____ of the ______________ Band, acknowledge receipt of Dominion of Canada cheque no. ____ dated _______, 19__ in the amount of ______, being in full and final settlement of my claim for compensation arising from the establishment of the Primrose Lake Air Weapons Range.

____
Signature

____
Witness

____
Witness

....

Age ___

Debts

M/S ___

Dependents _____

Personal History (General information, work history, attitude, character, welfare assistance, etc.)

Remarks (Plans; how will money be spent? Counsel or advice re money matters; is he banking his cheque?)

____
Interviewer

---

[380] See note 378.

When he appeared before the Commission, Mr. Knapp recalled that the forms were filled out over a much longer period and that extensive counselling had been given.[381] Given the passage of 32 years since the event, it is not surprising that his recollection should differ from his reports at the time. We find that there could not have been much opportunity for interviewing or counselling in the circumstances.

At the same time, the individuals receiving payment had little choice but to sign the receipt forms.

> COMMISSIONER PRENTICE: And in your view, did those people have any meaningful alternative other than to sign that quit claim [release] and receive the money, given the circumstances which they were in at that time in 1960?
>
> MR. KNAPP: In the circumstances they had at that time and the sophistication they had at that time, they wanted the money . . . The money stood there; it was available. To get it they had to sign this document.[382]
>
> . . . Stan Knapp
>
> But a lot of the people from the waiting period from the last payment until this one were so frustrated that they were having difficult times, they were just about ready to grab anything. It was so frustrating. So, I'm sure that since these -- [the minute these] dollars are mentioned, a lot of them signed for that reason.
>
> . . .
>
> They came along and said "here's your money, take it or leave it" sort of thing -- not exactly in those

---

[381] Cold Lake Transcript, vol. VIII, at 987-90 (Stan Knapp).

[382] Cold Lake Transcript, vol. VIII, at 1020 (Stan Knapp).

> words. After reminiscing, I remember now is how they put it, it meant the same thing: We have your cheques in place, you are going to get another payment. And you had better take it, you had better sign and take it now, because if you don't that money is going to go back to Ottawa, and God knows how long you're going to wait again before you will get another payment.[383]
>
> . . . Ernest Ennow

> Mr. Knapp, I guess, was there, and there was some other officials there. There was nobody there to represent us, or no chief or council or anybody. All we were given is this piece of paper and they told us you sign here. So Mr. Knapp puts the paper to me and he said, you have to sign here because that's the only way we've got to give you your cheque. So, okay, I'm going to get my cheque.[384]
>
> . . . Mary Martin

There was conflicting information given to us about the level of understanding in the community that this cheque would be the last payment of any kind to compensate for the losses people had suffered by being excluded from the air weapons range. We find that, given the length of time which had passed since the interim payments had elapsed and the need for more funds which was apparent to all concerned, there was practical compulsion to sign the quit-claims. The legal consequences of this finding will be discussed later.

Interest on the Compensation Account

In the annual report for fiscal year 1960-61, which ended March 31, 1961,

---

[383] Cold Lake Transcript, vol. I, at 93, 101-02 (Ernest Ennow).

[384] Cold Lake Transcript, vol. II, at 271 (Mary Martin).

Citizenship and Immigration reported that the Primrose Lake trust account had received $235,941.95 and that $238,760.80 had been expended.[385] There is no indication of the previous balance or explanation of the shortfall of $2,818.49, which was apparently unfunded. It appears, however, that the shortfall was made up from interest of $34,755.23 which had accrued at the rate of 5 per cent annually from the time of the first DND payment. The balance in the account after the last distribution had been made was only $32,464.74.

On June 21, 1961, the treasury officer of the department advised that this interest had been credited to the trust account, but that there had been no statutory authorization for the payment of interest.

> Therefore interest should not have been allowed and should be returned to the credit of the Receiver General unless the necessary authority of the Governor-in-Council is obtained.[386]

No effort was made to obtain authorization to retain these funds. There was some discussion before the Commission as to whether a claim for these funds was a matter included in the original 1975 claim submission. Ultimately, it was agreed by counsel that, if these claims are accepted for negotiation, the interest issue would be dealt with as part of compensation negotiations.[387] For that reason only, we will not make any comment on the failure to secure, or retain, interest on the trust account.

---

[385] Statement of Receipts and Disbursements, 31 March 1961, NA, RG 10, vol. 6341, file 736-1 (ICC, Documents, at 1626).

[386] J.P. Caron to H.M. Jones, 21 June 1962, NA, RG 10, vol. 6341, file 736-1 (ICC, Documents, at 1676).

[387] Transcript of Argument, at 408-11. Counsel for Canoe Lake were not present at that point in the proceedings.

Claims for Further Compensation

Once the trust account was effectively closed,[388] the matter of further compensation to Treaty Indians was, from the government's point of view, laid to rest. The need for economic rehabilitation remained, but that would no longer be dealt with as a compensation issue, or even as a matter for special appropriation within the budget of the Indian Affairs Branch.[389] The hardship in the community, which was acknowledged, was to be dealt with as a welfare issue.[390]

The Department of National Defence, however it may have resolved the issue with Treaty Indians, was not finished paying compensation. Having once increased the proposed payment to Métis claimants -- and securing full releases from them in return -- the department proceeded to do so again. The rationale was that the Métis had been paid much less than the Treaty Indians and the non-aboriginal claimants. Authorization was given to make a further payment to 110 Métis claimants of a total of $107,800, which would bring their average compensation to $1604. This would equal the average payment to non-aboriginal people.[391]

In 1963 the new superintendent at Saddle Lake, T.R. Kelly, reported that:

---

[388] The annual report for 1961/62 shows a balance remaining of $20.78.

[389] An internal Treasury Board memorandum notes that as of February 1961, a proposal for $1 million for economic rehabilitation was being prepared by Citizenship and Immigration: D.J. Hartt to J.A. MacDonald, 27 February 1961, NA, RG 10, vol. 6341, file 736-1 (ICC, Documents, at 1620). Such a proposal does not appear in the record and, presumably, never went forward.

[390] See, for example, L.S. Marchand to Leon Iron, 22 October 1965 (ICC, Documents, at 1736).

[391] Submission to Governor-in-Council, 22 May 1962 (ICC, Documents, at 1671-73); approved by Order-in-Council PC 1962-19/809 (12 June 1962) (not in ICC Documents).

> [C]ertain Band members [at Cold Lake] are endeavouring to collect a fund toward legal aid to press for further payments from the Department of National Defence . . . [T]his action is being taken on the verbal statement of Mr. Eklund and others to the effect that the amount would be spread over five payments . . . [P]ossibly your office will be hearing from a legal representative in due course.[392]

Over time, the Indian Affairs Branch changed its own perception of its role in the compensation negotiations. It had originally agreed to negotiate "with and on behalf of the Indians."[393] A subsequent letter to DND refers expressly to such negotiations "with individuals or bands of Indians."[394]

As the negotiations for the last payment from DND were being pursued, the Deputy Minister confirmed that his department did "indeed consider itself to be a trustee and agent for these Indians and will continue to act as such until the case has finally been disposed of."[395]

After the last payment, the role was redefined. One letter describes the role as "liaison with the Department of National Defence."[396] Despite the fact that the

---

[392] T.R. Kelly to Regional Supervisor, Alberta, 7 June 1963, DIAND, vols. 9-11, file 1/20-9-5 (ICC, Documents, at 1699). There is one letter in the record addressed to a Calgary lawyer during this period (ICC, Documents, at 1703), but nothing further.

[393] Laval Fortier to C.M. Drury, 3 November 1952, NA, RG 10, vol. 7335, file 1/20-9-5 (ICC, Documents, at 363).

[394] Laval Fortier to C.M. Drury, 27 February 1953. See also D.M. MacKay to G.H. Gooderham, 5 March 1953, both NA, RG 10, vol. 7335, file 1/20-9-5 (ICC Documents, at 387, 390).

[395] Laval Fortier to Marcel Lambert, MP, 12 May 1959, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 1270.2-.3).

[396] F.A. Clark to Rose Iron, 5 April 1966, DIAND, vols. 9-11, file 1/20-9-5 (ICC, Documents, at 1740).

Indian claimants had not dealt with anyone other than Indian Affairs officials, R.F. Battle wrote that they:

> acted as agents for the Indians and held many discussions with them to help establish the basis on which a claim for adequate compensation could be substantiated. The Branch was not negotiating with Indians; it only helped to present their case to the Department of National Defence.[397]

Apart from the suggestion that Indian Affairs officials acted as "agents," we find no support in the documentary record for these statements. While there were certainly discussions to obtain information, the basis of the claim for adequate compensation appears never to have been discussed with the Indian claimants, and it was clearly Indian Affairs officials who negotiated with the Indians in relation to the terms and conditions of the interim distributions and final payments. It was, however, the more limited role which became doctrine. By 1974, internal memoranda stated that Indian Affairs,

> was not a party to an agreement respecting compensation to fishermen and trappers for loss of use of the area. The Department's role was simply to facilitate negotiations and compensation payments to Indians with the Department of National Defence.[398]

It is true that Indian Affairs was not specifically party to any agreement with fishermen and trappers. It can hardly be said, however, that its joint submissions to Treasury Board and Cabinet -- especially in relation to the final payment from DND -- did not represent agreements with the other department respecting compensation to Indians. Nor can it be said that Indian Affairs simply facilitated negotiations with DND since there never were any direct negotiations on compensation between DND and Indian claimants.

---

[397] R.F. Battle to Percy Bird, Editor, *National Indian Council News Bulletin*, 18 November 1965, DIAND, vols. 9-11, file 1/20-9-5 (ICC, Documents, at 1738).

[398] J.B. Hartley to J.W. Evans, 17 October 1974, DIAND, vols. 9-11, file 1/20-9-5 (ICC, Documents, at 1797).

DND acknowledged no responsibility for the amount of compensation to Treaty Indians: "Detailed settlements with the Treaty Indians were made by the Department of Citizenship and Immigration with funds provided by the Department of National Defence."[399]

One one point, however, the two departments agreed. After 1961, there would be no further compensation to Treaty Indians for their losses caused by exclusion from the Primrose Lake Air Weapons Range. The long-standing request for assurance that the Indians would be able to resume their use of the range area when it was no longer required by the military went unanswered. The communities themselves were left with the principal role in identifying their own programs for economic rehabilitation.[400]

ECONOMIC REHABILITATION

The Indian Affairs Branch had one goal in mind for economic rehabilitation at Cold Lake. The former trappers and fishermen were to become agriculturalists.

---

[399] The Hon. Allan McKinnon, Minister of National Defence, to Terry Mylander, MP, 8 November 1979 (ICC, Documents, at 2159).

[400] "Like other communities ... the Cold Lake people must look within themselves for a solution to their social and economic problems. The [Indian Affairs] Branch always is willing to help, but the initiative must be theirs": R.F. Battle to Percy Bird, note 397 above.

Many, at least, had some experience with farming and this would be the basis upon which their new economy would be built. What was not fully appreciated, however, was that while many individuals had wage income from farm labour, very few actually made a living from farming on the reserve. We were told that this was largely an activity subsidized from the proceeds of hunting, trapping, and fishing.

Farming at Cold Lake before the Range

There had always been some farming activity at Cold Lake, but few individuals pursued agriculture as a full-time occupation prior to the creation of the air weapons range.

> My dad trapped during the winter and in the spring. With the money he made, he would buy pigs, chickens, cows and other animals, horses, so we could live for the summer. After trapping, and the summer came, my dad would farm, and I used to help him even though I was still small . . .
>
> My dad, when his grain would grow in the fall, he would harvest before the trapping trip. We used to take . . . three wagonloads of grain to St. Paul and sell it there. We would use one load of grain for flour and the mill would make flour for him, and that's what we used.
>
> And when fall came around, he had a lot of hay made because we had cattle and horses. Once the hay was made, we would head for Primrose.
>
> . . .
>
> We really did have a good life. We had a garden, potatoes. Everything we grew there, we'd use during the winter. My dad and I lived out in the bush . . .
>
> My mother and my brother were the ones that kept our home and livestock while we went up north. They

fed the livestock all winter, and the horses.[401]

. . . Charlie Blackman

My grandfather, as he did always, we used to have a little farm. He ran the tractors, he was some kind of a mechanic anyway, fixing up tractors and stuff for our neighbours around Beaver Dam. So we did all right for the summer.[402]

. . . Sarah Loft

I had about ten acres, just enough for the horses to feed. That's all I had, I didn't make any money with it or try and sell the grain or anything, just for feed, horse feed.[403]

. . . Toby Grandbois

[E]verybody used to go there and trap, and we had some people stay back here, some of the families. We had a few of horses here and few cow -- cattle, you know, and someone had to look after them. And the people that went up north tried to make money. They made money.

. . .

[In those] days, well . . . we never did depend on, you know, anybody. Whatever we did here in the farming, it all came from the trapping. If we made money in the spring -- we used to make pretty good --and people would buy their own grain and buy their own horses, and a little machinery.

. . .

This was earned by -- from the trapping, fishing, whatever.[404]

---

[401] Cold Lake Transcript, vol. III, at 294-98 (Charlie Blackman).

[402] Cold Lake Transcript, vol. III, at 342 (Sarah Loft).

[403] Cold Lake Transcript, vol. III, at 410 (Toby Grandbois).

. . . Jobby Metcheawis

We find that, in the period prior to the creation of the air weapons range, this pattern of farming activity being supported by the income from trapping and fishing predominated at Cold Lake. Relatively small areas were cleared for agriculture or available for hay. The principal purposes of farming were to provide feed for livestock -- horses, cows, and some pigs -- garden produce, and grain for flour. In most cases, these crops did not provide any income; to the contrary, they were subsidized by the income earned from resource harvesting, and most of that income came from the Primrose Lake area.

The Absence of a Plan

As noted above, the Department of Citizenship and Immigration felt that there was potential for agriculture at Cold Lake. This was identified early and continued as the focus of economic rehabilitation in that community. D.M. MacKay, Director of the Indian Affairs Branch, outlined the nature of the difficulties that might be encountered.

> With regard to the establishment of these bands in agriculture, several problems present themselves. First is the possibility that agricultural lands will have to be purchased for them. We do not have any record of these bands engaging in agriculture. *It would appear that Waterhen Lake, Pierce Lake and Cold Lake Reserves have limited possibilities but that Heart Lake and Canoe Lake Reserves are unsuited for farming.* Even if suitable land were obtained either by purchase or by clearing their

---

[404] Cold Lake Transcript, vol. II, at 137, 162 (Jobby Metchewais).

> present holdings *there still remains the expense of training them over a period of years* to a vocation contrary to their natural inclination, previous thinking or experience. *In this period of dependency they would be a charge on the state which, under the present plan for compensation, would be the Welfare appropriation of this Branch.*[405]

At the time of this report, the plan for compensation under discussion was one year's trapping income, which was recognized by Citizenship and Immigration to be inadequate. In response to this report, the Deputy Minister identified the need for "definite plans for the rehabilitation of the Indians" which should include some contingencies "to diversify their new modes of earning their livelihood."[406]

The regional supervisors in Alberta and Saskatchewan were instructed to provide full reports on the Bands affected, including agricultural potential of their reserve lands and "the complete cost of putting it into agricultural production."[407]

> In addition to the general picture a detailed report on each individual is required . . .
>
> . . .
>
> Under this heading please describe the present accommodation owned either on the reserve or trapline and your recommendation as to what new accommodation should be provided.
>
> . . .
>
> [In your report] each case should be considered

---

[405] D.M. MacKay to Laval Fortier, 22 November 1951, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 286). Emphasis added.

[406] Laval Fortier to D.M. MacKay, 29 November 1951, NA, RG 10, vol. 7334, file 1/20-9-5 (ICC, Documents, at 287).

[407] H.M. Jones to G.H. Gooderham, 3 December 1951, NA, RG 10, vol. 7334-36, file 1/20-9-5 (ICC, Documents, at 288).

> individually taking into consideration all the factors, including aptitude, outlined in the previous headings and making your recommendation as to new vocation. In this connection it would be preferable if the individual were consulted and given some choice in the matter.
>
> . . .
>
> [Estimate the costs] by individuals and this should cover the complete cost of rehabilitation in a new profession which, in our opinion, will vary with the individual and should include the cost of welfare maintenance of those who, because of age (although not qualified for old age assistance) are considered incapable of adapting themselves to a new vocation.[408]

G.H. Gooderham, regional supervisor in Alberta, reported in respect of all the affected Indians in that province. He suggested that, supplied with cattle and started in mixed farming, Alberta Indians would replace their lost income within two to three years, an estimate headquarters considered to be too optimistic.[409] After providing summary figures for various heads of compensation, he concluded:

> The above figures indicate that the annual income would be $60,000.00. Therefore this is the amount that these Indians should be earning when they are fully rehabilitated.
>
> It is believed that the simplest and most direct way to rehabilitate them is with cattle and the necessary equipment to produce and harvest fee. It is estimated that cattle and equipment purchased now for $100,000.00 will give them an earning of $60,000.00 at the end of three years.

---

[408] Note 407, above (ICC, Documents, at 289).

[409] H.M. Jones to D.M. MacKay, 1 April 1952, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 345).

> The total claim for compensation and rehabilitation should not exceed $320,000.00.[410]

The MacKay proposal, which formed the basis of the submission to DND for compensation, revised these figures upwards and calculated replacement income over a ten-year period.

> The main problem, however, is with relation to the Cold Lake Band who will be completely shut off from hunting and trapping and who will of necessity have to start anew in some other profession or vocation. In this case it is suggested that ten times the annual valuation would be a fair basis for compensation.[411]

This proposal recommended that the compensation be paid into Band funds or a central fund, principally to deal with the problem of rehabilitation, for which there was no comprehensive plan.

> Although their advice was requested, the field service have reached no unanimous conclusions, nor have they been able to make any recommendation concerning either the cost of rehabilitation or the basic method to be adopted. *The relation, therefore, between the amount suggested for compensation and the ultimate cost of rehabilitation is a matter of conjecture.* If our suggestion for compensation is adopted, the interest should be sufficient to finance a moderate program on an experimental basis with the capital available to be utilized

---

[410] G.H. Gooderham to H.M. Jones, 4 March 1952, NA, RG 10, vol. 7334, file 1/20-9-5 (ICC, Documents, at 333-34).

[411] D.M. MacKay to Laval Fortier, 23 April 1952, NA, RG 10, vol. 7334, file 1/20-9-5 (ICC, Documents, at 348).

> in establishing on a permanent basis those individuals who show an aptitude for their new vocation.[412]

The concept of a capital fund, or funds, to provide interest for experimentation and capital for successful programs was, in our view, a very sound approach to a very difficult problem. As it turned out, however, the amount of money contemplated was never delivered and this concept was never implemented. As noted above, only two interim payments, each equivalent to the estimated annual loss, were made by DND between 1954 and 1961.

DND was well aware of the need for economic rehabilitation, but not sympathetic to the idea that it should pay for such a program. To an internal memorandum pointing out that "the interim payment would be inadequate to meet complete rehabilitation," a handwritten notation was added:

> The Minister [the Honourable Ralph Campney] does not feel that Nat. Def. funds should be raided to improve the std. of living of Indians.[413]

The real question was whether the Indians at Cold Lake could maintain the standard of living they had previously enjoyed. The answer to that question would depend on the success of a plan of economic rehabilitation. And there was no plan.

From our review of the documents, it appears to us that the difficulty which must have confronted Indian Affairs officials in planning a program of economic rehabilitation for Cold Lake was fourfold. First, such a program would have to be directed at a viable economic activity, or activities, which would be roughly equivalent in scale to the hunting, trapping, and fishing income and benefits that were being lost. Second, the program would have to provide for training of the individuals intended to engage in it. Third, funding for the program would have to provide capitalization of the new activity to obtain whatever buildings, equipment, and inventory were needed to start it up. Fourth, funding for the program would have to provide interim income and benefits, equivalent to those that were lost, until such time as the new economic activity, or activities, were self-sustaining.

---

[412] See note 411 above (ICC, Documents, at 349). Emphasis added.

[413] C.F. Johns to C.M. Drury, 13 May 1955 (ICC, Documents, at 634).

One of the major problems of planning for Cold Lake was the absence of a firm commitment of funding. Reporting on that community, Eklund noted that "the administration of a rehabilitation program will be no small task and that a plan of operations should be considered in advance." His report continues:

> For the reason that almost 100% of the members of this Band have been affected by the Air Weapons Range, it is suggested that all family units of this band participate in the rehabilitation assistance, whether or not they had been registered trappers in the area that they have been obliged to vacate.[414]

R.F. Battle, then regional supervisor in Alberta, passed this recommendation on to headquarters and noted the difficulties encountered in mounting a rehabilitation plan.

> [Eklund has suggested that] consideration might be given to equalizing the amount of assistance given by instituting

---

[414] R.I. Eklund to R.F. Battle, 24 March 1955, NA, RG 10, vol. 7335, file 1/20-9-5 (ICC, Documents, at 595).

> rehabilitation on the basis of family units. While this would simplify the application of funds from an administrative point of view, I would not be prepared to recommend the approach unless the Indians were fully agreed.
>
> . . .
>
> . . . I am sure you realize that it is extremely difficult to intelligently prepare a rehabilitation program without some idea as to how long the program will continue.[415]

J.P.B. Ostrander, Superintendent of Welfare, felt that no general program should be implemented until the total amount of compensation was known. He also suggested that only individuals who were approved as claimants, but not Bands, had any legal or moral right to share in the compensation.

> If it is considered necessary to undertake a rehabilitation program embracing the whole band, it would appear that expenditures made on behalf of Indians who had no direct interest in the air weapons range should be financed from departmental appropriation in the usual manner.[416]

Stan Knapp, then newly appointed as superintendent of the Saddle Lake Agency, was briefed on the problem by a memorandum from the regional supervisor.

---

[415] R.F. Battle to J.P.B. Ostrander, 13 April 1955, NA, RG 10, vol. 7335, file 1/20-9-5 (ICC, Documents, at 607-08).

[416] J.P. B. Ostrander to H.M. Jones, 25 May 1955, NA, RG 10, vol. 7335, file 1/20-9-5 (ICC, Documents, at 640). His views were adopted and confirmed to the regional supervisor in Alberta: H.M. Jones to R.F. Battle, 7 June 1955, NA, RG 10, vol. 7335, file 1/20-9-5 (ICC, Documents, at 651). Chief and Council accepted this ruling: S.C. Knapp to R.F. Battle, 22 June 1955, NA, RG 10, vol. 7335, file 1/20-9-5 (ICC, Documents, at 675). Individuals who were not on the approved list were to be put on the welfare rolls: S.C. Knapp to R.F. Battle, 22 June 1955, NA, RG 10, vol. 7335, file 1/20-9-5 (ICC, Documents, at 675) and R.F. Battle to J.P.B. Ostrander, 25 February 1959, NA, RG 10, vol. 7335, file 1/20-9-5 (ICC, Documents, at 859).

> What has not been determined is the number of years that such loss of income [the annual figure represented by the first interim payment] will be paid, and pending further discussion at higher level and advice from Ottawa, *this phase of the problem should not be discussed with the Indians.*
>
> . . . Until we know if we will receive anything more from National Defence, we cannot properly plan a rehabilitation program. As I see it, rehabilitation will take the form of supplying equipment and livestock, breaking lands, providing housing and paying limited awaiting returns until the Indian has obtained the means to live from his own efforts.[417]

Knapp met with Cold Lake Council on June 21, 1955. He told them that "they should be prepared to have some plans for rehabilitation ready and be working on them once they receive their money."[418] He felt that some progress had been made and noted that he had endeavoured to make Council feel that they had a direct responsibility in the matter. Eight days later, Council sent in the following resolution:

> [W]e expect the Government to keep its promise and start the rehabilitation work immediately. Further the money paid on this treaty day [the first awaiting returns payment] is not enough to rehabilitate us and we are afraid that all our money will be spent this way unless we get the money to buy farming equipment and cattle and

---

[417] R.F. Battle to S.C. Knapp, 13 June 1955, NA, RG 10, vol. 7335, file 1/20-9-5 (ICC, Documents, at 660). Emphasis added.

[418] S.C. Knapp to R.F. Battle, 22 June 1955, NA, RG 10, vol. 7335, file 1/20-9-5 (ICC, Documents, at 676).

> money for breaking [land] with it. Further that sufficient money be paid to us to pay our grocery bills so that we can continue to buy food to feed our families . . . We feel that this business has dragged on too long without being settled.[419]

By September, Eklund reported that people from Cold Lake had purchased three used building units and that there was heavy purchasing of hand tools, washing machines, and household equipment, "despite our efforts to discourage the purchase of any household items." He also noted that more hay had been put up than ever before, one well had been completed and several others were in progress, 72 head of cattle had been purchased with 63 remaining to be purchased, and 83 horses purchased with a further 15 remaining to be purchased.[420] All of this, it appears, was largely unplanned, as shown by a letter from the regional supervisor the following month.

> You will remember it was our opinion that we would have some difficulty developing an over-all plan of an objective nature without some advice as to how long the rehabilitation program would continue . . . [I]t now appears essential that we seek the advice of competent agricultural authorities who have had experience in the application of agricultural theories and practices to the particular region in question . . . [F]or the moment the first approach should be made to the local district agriculturalist at St. Paul. Would you therefore please arrange a meeting . . . *Primarily, your objective would be to prepare a settlement plan, taking into consideration*

---

[419] R.A. Nissen to Indian Affairs Branch, 29 June 1955, NA, RG 10, vol. 7335, file 1/20-9-5 (ICC, Documents, at 684).

[420] R.I. Eklund to R.F. Battle, 15 September 1955, NA, RG 10, vol. 7335, file 1/20-9-5 (ICC, Documents, at 770-71).

> *the agricultural potential of the area and the ability of the Indians to take advantage of this potential.*[421]

In the spring and summer of 1956, an agricultural assistant did a survey of the Cold Lake reserves. He filed three reports, each two pages in length,[422] and these do not appear to have been acted upon. No other plan to organize the Cold Lake communities for agricultural purposes appears in the record. We conclude that no such plan was ever developed.

The Failure of the Farming Project

After the interim payments were received, the individuals who were compensated had funds available through the voucher system to purchase farm equipment and livestock. The record shows that they were encouraged to make such purchases and that, in the expectation of further annual payments, many went into debt to do so. The results were predictable.

> [Y]ou must remember, too, that you've got a complete change of lifestyle. Now, to make that adjustment, if you put a handful of money here, the change of that lifestyle varies. One guy is going to make use of it, and the other one is not. So, if they would have carried on assisting the members on yearly terms, and train the people; help them; assist them on their farms to try to get adjusted to a new way of life, yes, I would say that would be beneficial . . . I would say certainly training and

---

[421] R.F. Battle to S.C. Knapp, 24 October 1955, NA, RG 10, vol. 7335, file 1/20-9-5 (ICC, Documents, at 798). Emphasis added.

[422] G.C. Findley to R.F. Battle, 30 May 1956, and Report from G.C. Findley, 30 May 1956, both NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 918-19, 920-21), and G.C. Findley to R.F. Battle, 3 July 1956 (ICC, Documents, at 934-35).

> assistance would change that lifestyle.[423]
>
> . . . Charlie Metchewais

One thing the rehabilitation funds did was buy livestock and farm equipment. We estimate that over $100,000 was spent on this in the two years from July 1955 to August 1957, after which the money was gone. The actual value of what was purchased was likely much more since it appears that some debt was incurred as well. We do not have a precise figure for the amount of that debt.

The difficulty, however, as pointed out by Charlie Metchewais, is that there was no coordination or plan to make these purchases economically efficient. We were told of one extreme example of this problem:

> I remember a neighbour of ours, just across the road, he was already quite old. Somehow or another, these purchase orders, or whatever they were, were negotiated by someone else, I guess. This gentleman, all of a sudden, he's staying at home and here he gets this old tractor. Now, the poor old guy don't know one end of a tractor from the other, you know. So he's walking around this thing, scratching his head . . . So, he turned around and sold that tractor for a horse. At least he could manage a horse.[424]
>
> . . . Maurice Grandbois

Some people seemed to get value for the money they invested in farming.

> So that, with that money I got, we bought the cow and the calf. And that's how we had a milk cow. And they

---

[423] Cold Lake Transcript, vol. VI, at 708 (Charlie Metchewais).

[424] Cold Lake Transcript, vol. VI, at 757 (Maurice Grandbois).

> started to increase, the one cow we had bought then, the other heifers. We got --- so we had enough cattle --- cows we used to milk and ship cream. It wasn't very much, I guess, but it was enough for a living.[425]
>
> . . . Mary Martin
>
> MR. MARTEN: I bought things I would use like a tractor, machinery and other things I could use for work.
>
> MR. MAURICE: So you were involved with some farming then after the Range closed?
>
> MR. MARTEN: Yes.
>
> MR. MAURICE: Could you tell us a bit about your farming operation?
>
> MR. MARTEN: I planted wheat and oats. I had seventy acres of land to use.
>
> MR. MAURICE: How long did you farm?
>
> MR. MARTEN: About ten, twenty years.[426]
>
> . . . Simon Marten

The reality for most people, however, was that there was not enough money.

> [A]fter the two payments, there was no more money. We didn't know how to get any more money. Well then, I thought to myself, you know, gee, there has to be something done . . . There was some people, they sold

---

[425] Cold Lake Transcript, vol. II, at 272 (Mary Martin).

[426] Cold Lake Transcript, vol. I at 76-77 (Simon Marten).

everything back. They didn't get very much, but when they were so desperate, they had to sell everything.[427]

. . . Nora Matchatis

I said we farmed on a small scale, but that was a very small scale. We couldn't -- you couldn't make a living at it, it was just something else to do in the summertime. So, a lot of the people tried their hand at farming, they went into machinery, some bought cattle. And after two payments, when the payments were stopped, they could not carry on. There was no more money coming in. So, people started selling off machinery, selling off cattle so they could survive, and they deteriorated to just about nil in all cases.[428]

. . . Ernest Ennow

With that $2,400 I bought a tractor. With the rest, I had my land here plowed. There was no grain on it. After I paid the person who plowed, there was nothing left.[429]

. . . Edward Grandbois

The next time we received payment, we used it to buy horses, seed for our fields, things we needed like tractors and other equipment that was necessary for farming. That's what we used. Everybody started farming then, but the machinery started to get expensive, so everybody eventually left it alone. We don't even put potatoes in the ground anymore. We have no means anymore.[430]

---

[427] Cold Lake Transcript, vol. II, at 194 (Nora Matchatis).

[428] Cold Lake Transcript, vol. I, at 91 (Ernest Ennow).

[429] Cold Lake Transcript, vol. V, at 573 (Edward Grandbois).

[430] Cold Lake Transcript, vol. III at 318 (Louis Janvier).

. . . Louis Janvier

All of this is reflected in the reports of Indian Affairs officials at the time. At the height of the purchasing, in 1956, the Saddle Lake Agency reported that the people at Cold Lake were "responding well to this new way of life forced upon them," and that "there has been a substantial amount of activity and general improvement this year."[431] One year later, when the money was gone, Superintendent Knapp reported a different situation. "Many of them have abandoned farming and have no intention of pursuing this occupation . . . In assessing the whole situation, it is apparent that our efforts to make farmers out of trappers too quickly and on such a large scale, is nothing but a dismal failure."[432] After the final payment was made, four years later, this was his assessment:

> A careful analysis reveals that only a limited portion of the $170,000.00 [final payment] will actually be used or can be used to re-establish a group of trappers in some other occupation.
>
> *It is believed that both in 1955 and 1956 we looked at this money and problem through rose coloured glasses.* If we had given it as I have done now a more searching analysis our original hopes and evaluation would have been more realistic.[433]

Thirty-two years after that report was made, its author continued to feel that the rehabilitation project was a failure.

---

[431] S.C. Knapp to Indian Affairs Branch, 1 March 1956, NA, RG 10, vol. 7335, file 1/20-9-5 (ICC, Documents, at 871).

[432] S.C. Knapp to R.F. Battle, 12 September 1957, NA, RG 10, vol. 7336, file 1/20-9-5 (ICC, Documents, at 1064, 1066).

[433] S.C. Knapp to L.C. Hunter, 21 February 1961, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 1604). Emphasis added.

> COMMISSIONER BELLEGARDE: . . . Now, would you say that the reason for the perceived failure was because of a lack of resources, as I think you mentioned, or a lack of a plan to use the resources effectively?
>
> MR. KNAPP: I think it was both.[434]

We certainly agree with the officials of the day that a large-scale program of economic rehabilitation was needed and justified at Cold Lake. And we cannot disagree with the view that agriculture may have held out the best opportunity for those people. But there can be no doubt that the lack of an appropriate strategy, the woeful underfunding of the project, and the failure to establish realistic objectives over a realistic period of time doomed the whole effort to failure from the start.

The Plan That Should Have Been

After the Cold Lake people were excluded from the range, the challenge of an agricultural program was to convert what had been a small and subsidized activity, largely engaged in on a part-time basis by people whose principal livelihood came from other sources during the greater part of the year, into a self-sustaining economic base. In the absence of a proper plan put forward by government at the time, the Commission needed some basis for comparing what did happen with what could, or should, have happened. To that end, we commissioned a study by Serecon Valuation and Agricultural Consulting Inc. of

---

[434] Cold Lake Transcript, vol. VIII, at 1008-09 (Stan Knapp).

Edmonton, Alberta.

The Serecon Report is directed at the period between 1955 and 1961. Within that time frame, its objectives are:

- to determine the agricultural potential of those lands allocated to the Cold Lake First Nations as Indian Reserves, which total approximately 72 sections (square miles) of land;
- to provide a cropping plan that would maintain sustainable optimal utilization of the lands for an extended period;
- to outline the capitalization needs to put the agronomic plan in place; and
- to determine the training and other support needs of the community to initiate and maintain the agricultural plan.

The report indicates that 67 per cent of the Cold Lake reserve lands are suitable for arable agricultural production: 47 per cent being Class 3 lands suitable for feed-grain production and perennial forage production; 20 per cent being Class 4 lands marginally suitable for feed-grain production. Eight per cent of the arable land could be subject to moderate or high-risk erosion or drainage problems. The consultants, taking into account the need for reorganization of farm lots to a more economic scale, estimate that 75 per cent of the arable lands could have been developed.

> The extent of development would have been determined by the skills and mangement capabilities of the reserve people, the desire to make the change from one economic base to another and the time to learn a new full time

profession under these circumstances.[435]

The report postulates a 20 to 25 year program leading to development of 50 family farms and three much larger Band farms under professional management and supporting 10 families. The capital costs for this plan, building on the stock of farmland in use in 1955, would have been $28,535 for each family farm and $115,675 for each Band farm. These costs would include buildings, equipment, clearing, fencing, and livestock. The total capitalization figure for the full program would have been $1.774 million in 1955-61 dollars. This component alone is more than three times the total amount paid to Cold Lake for compensation and rehabilitation.

The consultants also identify the need, during the first five years, for as many as three full-time farm technicians for training and technical advice, with one technician required thereafter. The cost during the period 1955-65 would have been $60,000.

Assuming that the plan proceeded with considerable success, the consultants estimate that, by 1960, the net cash income to each individual family farm unit would have been $750, with perhaps as much as $500 income in kind (food value, etc.). This amount would have grown, under good conditions, to $1250 cash income with time. It would still have represented a net loss of income to trappers who had the potential to earn $2000 or more cash income from their livelihood before they were forced to abandon it.[436]

---

[435] Sereccon, note 2 above, at 53.

[436] See, for example, G.H. Gooderham to D.M. MacKay, 31 October 1951, NA, RG 10, vols. 7334-36 (ICC, Documents, at 278): "$2,000 is a very conservative estimate of the income that each trapping family would lose."

The Serecon Report concludes with a caution about its modern relevance, given that the consultants were asked to provide us with a plan that would have been workable nearly four decades ago.

> As of 1955 the present reserve land base and more particularly, the limited reserve arable land base was adequate to provide a viable sized farm unit for up to 60 families. However, as the population increases naturally, the size of the land base will be unable to accommodate all Band members on farms. In addition, the size of a typical viable farm in the Bonnyville area has increased from a land base of 320 total acres, 170 acres cultivated, to 800 acres with 700 acres cultivated in 1991/92. Farm economics have changed and the size of the farm land base has had to increase to accommodate the changing demands over time. Technological change has been the downfall of some unsophisticated farmers today. Equipment is high-tech, marketing is a major time consuming and advanced process, and all farmers have to be on top of the latest crop varieties, types and inputs to be competitive.
>
> All these changes will have an impact on the long-term success and the achivement of the goal to alter the economic base or livelihood. As stated in our report, this goal will be achieved, with enough time and capital. However, due to the long-term process one must consider the effect these limitations will have on achieving that goal.[437]

Based on the Serecon Report, which we find to be a considered and professional assessment of the nature of the problem and the scope for an agricultural solution, we conclude that a proper agricultural strategy, adequately funded and implemented over sufficient time, could have accommodated most of those affected by dislocation from the air weapons range. That, of course, assumes that all concerned would have been willing to adopt the new lifestyle, learn the new skills, and settle for a net loss of income.

---

[437] Serecon, note 2 above, at 64-65.

We find there to be no reason why such a strategy could not have been developed by competent agronomists at the time when it was most needed. This omission guaranteed the undisputed failure that occurred.

LONG-TERM IMPACT OF THE AIR WEAPONS RANGE

There can be no dispute that the exclusion of the people of Cold Lake from the air weapons range almost destroyed their livelihoods and their access to food and other resources. The results of that event continue as a sense of loss and a source of grievance in the community and the results are still painfully evident. The damage to the community was not only financial, it was psychological and spiritual.

> It's not very easy for us for making our own living at a time when they took that Primrose away from us. That was our living. That's where we had children and had plenty to eat. There was lots of fish and meat and whatever . . . We miss it. I miss it right now.
>
> . . .
>
> Youngsters, they don't know what to do. They are not taught. I feel sorry for my new generations that they can't learn how to snare. They don't even know how to set a net. These young boys of sixteen, eighteen, they don't know how to make a living.[438]
>
> . . . Victoria Piche

---

[438] Cold Lake Transcript, vol. V, at 591, 600 (Victoria Piche).

> Like I said, when people lost their tradition and what they were most active in -- they participated in this wholeheartedly -- *why, once they lost that, it seems like they lost all ambitions and initiatives and the dedication*.[439]
>
> . . . Maurice Grandbois

> To me [my father] was a hero. I looked up to this man -- all five-foot five of him. I loved him dearly. That was his simple symbol of manhood, going up north, doing what he did. Even with less experience than other hunters and trappers, he was still doing okay. He was a man's man. But after they took that away from him, things fell apart.
>
> He will forgive me if I say that he got further and further into the alcohol problem. The family fell apart . . .
>
> This is an illustration that Primrose Lake was everything that the people needed to practise livelihood, to be a man . . . My father had cattle and little by little the cattle disappeared. The implements that he had bought, they also disappeared, and nothing is left of his homestead now.[440]
>
> . . . Allan Jacob

> CHIEF COMMISSIONER LAFORME: So, when you say on account of alcohol, is it that your husband started drinking?
>
> MRS. SCANIE: I can't blame only my husband. I drank too. I can't hide nothing.
>
> CHIEF COMMISSIONER LAFORME: Oh, no. That's fine. Did this start to happen after the trapping was all closed

---

[439] Cold Lake Transcript, vol. VI, at 750 (Maurice Grandbois). Emphasis added.

[440] Cold Lake Transcript, vol. VI, at 786-87 (Allan Jacob).

down?

. . .

MRS. SCANIE: Yes, there was nothing to do, see. This kept people away from things like that; going back [north] and coming in. That's a nice big job; going back and going in and out like that. You've got something to do. You are working.[441]

. . . Scholastique Scanie

I was trained as an alcohol counsellor in 1975. Ever since then, I have been working for alcoholics because I am an alcoholic myself.

As I just finished telling you, after they took the bombing range away from us, they poisoned us. But I was smart enough to quit . . .[442]

. . . Eva Grandbois

I looked for my livelihood every way I could. I made leather for sewing, for which I got paid, and that is how I made my living for food. I would also sell moose hide and go snaring rabbits and fishing. These were important. The rest, I don't know. Now presently, I couldn't take care of myself the way I used to.

It wouldn't matter if I was bludgeoned to death because I feel useless. Life is not good today because too many of us are very poor.[443]

. . . Sophie Minoose

I wish I was up there [at Primrose Lake]. I'd be better off than sitting at home doing nothing. *My mind is over there all the time. Not here, over there. That's how my mind works right now, how good it was in the bush.* That's how I was raised over there in the bush. *That was*

---

[441] Cold Lake Transcript, vol. VI, at 659-60 (Scholastique Scanie).

[442] Cold Lake Transcript, vol. III, at 452 (Eva Grandbois).

[443] Cold Lake Transcript, vol. IV, at 513-14 (Sophie Minoose).

> *my life.*[444]
>
> . . . Toby Grandbois

It is unrealistic to think that a trapping and fishing economy could have continued, through the past 40 years, to sustain the growing community at Cold Lake at the same level of relative prosperity it enjoyed in 1953. Unlike the situation at Canoe Lake, there was at least one major opportunity for a change to a different economic base: agriculture. But the failure to develop a realistic strategy to achieve that goal, the failure to identify and secure proper funding for such a project, and the uncertainties of cash flow and debt which frustrated any planning initiatives meant, quite simply, that the opportunity was wasted.

The people of Cold Lake were not given any reasonable period to adapt to change in the ways in which they might pursue their livelihoods. Their economy was virtually eliminated overnight. They remain unable to gain access to lands which used to be, at least, the most productive of furs, fish, and food for them. Their exclusion from the range in 1954 created a problem of great urgency, but no solution came beyond an ill-concieved and greatly underfunded attempt to make farmers of them. There has, in fact, been no restitution for the damage done to that community.

The basic issue before the Commission is whether the government of Canada has a lawful obligation to make reparation -- beyond the compensation already paid -- for the harm that was done to the people at Canoe Lake by the establishment of the Primrose Lake Air Weapons Range. That is the issue we will address in parts V and VI of this report.

We do find that the creation of the Primrose Lake Air Weapons Range had such a profound impact on the Cold Lake First Nations that, in less than one generation, a self-reliant and productive group of people became largely dependent upon welfare payments. The cumulative impact was to destroy the community as a functioning social and economic unit.

---

[444] Cold Lake Transcript, vol. III, at 424 (Toby Grandbois). Emphasis added.

PART V

THE COMMISSION MANDATE AND SPECIFIC CLAIMS POLICY

THE MANDATE OF THE INDIAN CLAIMS COMMISSION

The mandate of this Commission to conduct inquiries pursuant to the *Inquiries Act* is set out in a commission issued under the Great Seal to the Commissioners on September 1, 1992. It directs:

> that our Commissioners on the basis of Canada's Specific Claims Policy . . . by considering only those matters at issue when the dispute was initially submitted to the Commission, inquire into and report upon:
>
> (a) whether a claimant has a valid claim for negotiation under the Policy where that claim has already been rejected by the Minister; and
>
> (b) which compensation criteria apply in negotiation of a settlement, where a claimant disagrees with the Minister's determination of the applicable criteria.[445]

These are inquiries into claims that have been rejected. The joint claim submitted in 1975 was rejected the same year by the Honourable Judd Buchanan, then Minister of Indian Affairs and Northern Development.[446] A further letter rejecting the claim was sent by a subsequent minister, the Honourable Hugh

---

[445] Commission issued 1 September 1992 pursuant to Order in Council PC 1992-1730 (27 July 1992), amending the Commission issued to Chief Commissioner Harry S. LaForme on 12 August 1991 pursuant to Order in Council PC 1991-1329 (15 July 1991), Exhibit Book, at Tab "A".

[446] The Hon. J. Buchanan to R. Price, Indian Association of Alberta, 4 December 1975 (ICC, Documents, at 1977).

Faulkner, to Chief Leo Janvier of Cold Lake in 1978.[447] In 1989 the Cold Lake First Nations commenced an action in the Federal Court of Canada, Trial Division, which has not proceeded to trial.[448]

Canoe Lake, through its legal advisers, resubmitted the claim in 1985 in the form of a draft statement of claim and supporting legal argument.[449] This further claim was rejected by the then minister, the Honourable Bill McKnight, in 1986.[450]

The Cold Lake First Nations requested that the Commission conduct an inquiry into the rejected Primrose Lake Air Weapons Range claim on November 12, 1991.[451] The Canoe Lake Cree Nation made a similar request on November 18, 1991.[452] At that time, the Commission was not in a position to accede to these requests as its mandate was under review and only the Chief Commissioner had been appointed. Six additional Commissioners were appointed in July 1992 and, as noted above,[453] the Commission gave notice to the parties of these inquiries on

---

[447] The Hon. H.R. Faulkner to Chief Leo Janvier, 13 March 1978 (ICC, Documents, at 2032).

[448] Federal Court of Canada, Action No. T-2026-89, Statement of Claim filed 28 September 1989; Amended Statement of Claim filed 4 September 1990; Statement of Defence filed on behalf of Canada, 28 November 1990, Exhibit Book,Tab "C".

[449] W.R. McMurtry, QC to the Hon. David Crombie, Minister of Indian Affairs and Northern Development, 26 July 1985, Exhibit Book, at Tab "M".

[450] The Hon. Bill McKnight, Minister of Indian Affairs and Northern Development, to Chief Tom Iron, Canoe Lake, 22 December 1986, Exhibit Book, at Tab "M".

[451] Band Council Resolution 65-1991, 12 November 1991, Exhibit Book, at Tab "B".

[452] Band Council Resolution, 18 November 1991, Exhibit Book, at Tab "L".

[453] See note 1 above.

October 31, 1992.[454]

Under its mandate, the purpose of the Commission in conducting these inquiries is to inquire into and report on whether, on the basis of Canada's specific claims policy, the respective claimant First Nations have valid claims for negotiation.

A SUPPLEMENTARY MANDATE

During the period when revisions to the original mandate of the Commission were still under discussion, the Indian Affairs Minister, the Honourable Tom Siddon, wrote to National Chief Ovide Mercredi of the Assembly of First Nations in the following terms:

> If, in carrying out its review, the Commission concludes that the policy was implemented correctly but the outcome is nonetheless unfair, I would again welcome its recommendations on how to proceed.[455]

Counsel for the government, in their written submissions, confirmed that the government expects recommendations on how to proceed if the Commission should find that the specific claims policy was properly applied in rejecting these claims, but that the result is unfair.[456] We find that the policy was not implemented correctly, and it is therefore unnecessary for us to rely upon this supplementary mandate.

---

[454] For the general approach the Commission takes to its decisions on whether to conduct an inquiry, see Interim Ruling: Athabasca Denesuline Treaty Harvesting Rights Inquiry, 7 May 1993.

[455] The Hon. Tom Siddon, Minister of Indian Affairs and Northern Development, to Ovide Mercredi, National Chief, 22 November 1991, quoted in Submissions on Behalf of the Government of Canada, at 1-2.

[456] Submissions on Behalf of the Government of Canada, at 13.

THE SPECIFIC CLAIMS POLICY

The Indian Claims Commission is directed to report on the validity of rejected claims "on the basis of Canada's Specific Claims Policy." That policy is, in effect, a defined term for purposes of the mandate of the Commission. It is:

> Canada's Specific Claims Policy published in 1982 and subsequent formal amendments or additions as announced by the Minister of Indian Affairs and Northern Development.[457]

The 1982 publication referred to is a booklet put out by the department entitled Outstanding Business, A Native Claims Policy: Specific Claims.[458] To date, it has been amended only by deleting the exclusion of claims "based on events prior to 1867."[459] With that exception, references to the policy in this report are references to *Outstanding Business*.

THE ISSUE OF "LAWFUL OBLIGATION"

While the Commission is directed to look at the entire policy in its review of rejected claims, the focal point of its inquiry, in the context of these rejected claims, must be the following passage:

---

[457] Order in Council PC 1992-1730 (27 July 1992), Exhibit Book, at Tab "A".

[458] Department of Indian Affairs and Northern Development (Ottawa: Minister of Supply and Services, 1982).

[459] The exclusion is described in *Outstanding Business*, at 30. Its removal from the specific claims policy as of 1991 is confirmed in another booklet, *Federal Policy for the Settlement of Native Claims* (Ottawa: DIAND, 1993), at iv, 22.

> The government's policy on specific claims is that it will recognize claims by Indian bands which disclose an outstanding "lawful obligation," i.e., an obligation derived from the law on the part of the federal government.
>
> A lawful obligation may arise in any of the following circumstances:
>
> i) The non-fulfillment of a treaty or agreement between Indians and the Crown.
> ii) A breach of obligation arising out of the *Indian Act* or other statutes pertaining to Indians and the regulations thereunder.
> iii) A breach of an obligation arising out of government administration of Indian funds or other assets.
> iv) An illegal disposition of Indian land.
>
> In addition to the foregoing, the government is prepared to acknowledge claims which are based on the following circumstances:
>
> i) Failure to provide compensation for reserve lands taken or damaged by the federal government or any of its agencies under authority.
> ii) Fraud in connection with the acquisition or disposition of Indian reserve land by employees or agents of the federal government, in cases where the fraud can be clearly demonstrated.[460]

The issue before the Commission is whether there has been a breach of a lawful obligation on the part of the Crown. Such an obligation may be found in the breach of a treaty or a breach of a fiduciary duty derived from the law. In our view, the list of examples enumerated in the policy is not intended to be exhaustive.

---

[460] *Outstanding Business*, at 20.

SUMMARY OF ARGUMENTS

Counsel for the Canoe Lake Cree Nation argue that there is an outstanding lawful obligation because of the Crown's fiduciary duties:

- based on its nation-to-nation relationship with the claimant as affirmed by the *Royal Proclamation of 1763* and the *Rupert's Land and Northwest Territory Order* of 1870;
- to fulfil and implement the terms of Treaty 10, including the protection and preservation of the way of life of the claimant;
- to compensate the claimant fully for abrupt dispossession and expropriation of traditional territories in the range area; and
- to secure full compensation for the claimant based on its undertaking to act on behalf of the claimant.

Counsel for the Cold Lake First Nations argue that an outstanding lawful obligation exists because:

- the claimant, or its members, had an interest in the traditional lands around Primrose Lake which had been used and occupied by them continuously from time immemorial;
- the Crown breached its fiduciary responsibility to protect the Indian interest in lands included in the range;
- Canada further breached its fiduciary obligations to the claimant by failing to provide adequate compensation and rehabilitation; and

- the Crown, as a fiduciary in this claim, cannot rely upon the consent of the claimant or its members to accept a final payment.

When presenting their respective arguments before the Commission, counsel for each claimant substantially adopted the submissions of counsel for the other.

Counsel for the Government of Canada argue that there is no outstanding lawful obligation because:

- individual members of the claimant First Nations cannot advance a specific claim;
- the claimant First Nations have no claim and no right to compensation based on the events surrounding creation of the range;
- the claimants had no legal interest in these traditional lands, any interest having been previously ceded by treaty;
- the claimants' rights in the area were limited to the right to hunt, trap, and fish for food as set out in the *Constitution Act, 1930*, plus compensable rights under appropriate licences to fish and trap commercially;
- neither the treaties nor the *Constitution Act, 1930*, confer any right of compensation when lands are taken up so as to exclude aboriginal harvesting rights;
- Canada neither had nor assumed fiduciary obligations to the claimants or, if it did, it discharged those obligations;
- compensation was adequate in terms of the rights or interests the claimants could assert in law;
- in any event, the releases signed by individuals are an effective bar to any claim on their part for further compensation; and

- in the case of the Cold Lake First Nations, their treaty rights did not extend into the range, which is outside the boundaries set out in Treaty 6, and that treaty does not protect trapping rights.

It is convenient to deal with some of those arguments now.

Counsel for Cold Lake submit that the interest of their clients in the lands around Primrose Lake was higher than a right of access to unoccupied Crown lands and more in the nature of a possessory interest based on long use and occupation of those lands.[461] In argument, Mr. Crane conceded that "it is debatable what the extent of that property interest is, because the facts would have to be examined."[462] Given the findings we make, we did not find it necessary to pursue this line of argument.

Counsel for the government advanced two arguments in relation to Treaty 6.[463]

The first argument is based on the wording of the text of Treaty 6. It assures the rights to hunt and fish "throughout the tract surrendered as hereinbefore described." Counsel say that the "tract surrendered" means the area within the boundaries of Treaty 6, which would exclude most of the traditional area centred on Primrose Lake. Because only a small fraction of these lands is within the Treaty 6 boundaries, they submit that the Cold Lake First Nations have no Treaty 6 rights in their traditional hunting grounds.

We find in the treaty text at least 12 other references to areas, districts, or tracts of land. It appears to us that, where these references are to lands within the treaty boundaries, there is explicit reference either to the boundaries (limits, lines) or to the fact that those lands are inhabited by the Indian parties.[464] There is no such language modifying "the tract surrendered" in the clause assuring harvesting rights. In any event, we do not find such rigorous and consistent usage of words throughout Treaty 6 that we would be prepared to find that hunting, fishing, and trapping rights should be limited, contrary to the historical context, on grammatical grounds alone. Yet no other grounds were advanced.

---

[461] Submissions on Behalf of the Cold Lake First Nations, at 32-33.

[462] Transcript of Argument, at 356 (Mr. Crane).

[463] Submissions on Behalf of the Government of Canada, at 44-46.

Government's second argument is that Treaty 6 refers only to rights of "hunting and fishing." Counsel compare this to Treaty 10, which uses the words "hunting, trapping and fishing." This, say counsel, means that the Cold Lake First Nations have no treaty rights to trap.[465] We find nothing in the historical context of Treaty 6 to support any intention on anyone's part to exclude trapping as a means of livelihood for the Indians. The detailed minutes of the treaty negotiations record no attempt to define, explain, or interpret the word "hunting" in any manner which would exclude either the concept or the pre-existing fact of trapping from the more general terminology assuring harvesting rights. We find this to be a wholly technical argument, outside the spirit and the intent of the 1982 policy, and we cannot accept it..

In the next part of the this report, we will deal with the balance of the arguments at greater length.

---

[464] See, for example, the recital quoted at note 232 above.

[465] Submissions on Behalf of the Government of Canada, at 46.

PART VI

FINDINGS AND CONCLUSIONS

The overall question this Commission has been asked to examine and report on is rudimentary: Did the Government of Canada properly reject the land claims of the Cold Lake and Canoe Lake First Nations in 1975 and 1986? In other words, did the government breach any lawful obligation, as set out in *Outstanding Business,* to these Bands?

The resolution of this issue involves answering two questions:

> 1. Did the Government of Canada breach its treaties with the peoples of Cold Lake First Nations and the Canoe Lake Cree Nation by excluding their people from their traditional hunting, trapping, and fishing territories in the early 1950s so that those lands could be converted for use as the Primrose Lake Air Weapons Range?
>
> 2. Did the Government of Canada breach any fiduciary obligation owed to the First Nations, following the exclusion of their people from their traditional territories?

THE INTERPRETATION OF TREATIES 6 AND 10

The First Nations allege that the Government of Canada breached Treaties 6 and 10. This question turns upon the proper interpretation of the treaties. The parties disagree whether this Commission may take into account, in the interpretation of the treaties, the historical reports drawn up by the Treaty Commissioners.

At issue is the following. Treaties 6 and 10 provide the Indian people with the right to pursue their traditional hunting, trapping, and fishing vocations on the territory which they surrendered. Their entitlement in that regard was qualified in one important respect. Those traditional lands could be taken up by the Government of Canada "from time to time" for the purposes of "settlement, mining, lumbering, trading or other purposes."[466] The question is whether this right to "take up" traditional lands is so broad as to permit the government to take away in one stroke the entirety of the area relied upon by the Indian people for hunting, fishing, and trapping purposes.

In the context of these claims it is important to note, as previously discussed, that the very economy, culture, and society of the Cold Lake and Canoe Lake First Nations were still premised, in 1954, on this traditional way of life. It is also important to consider the applicability of the oral statements made by the Treaty Commissioners in the negotiation of these treaties.

In its review of specific claims, including claims relating to the fulfilment of treaties, this Commission is directed to base its deliberations and its findings upon the specific claims policy.[467] That policy sets out the following guideline for the assessment of specific claims:

> 6. All relevant historic evidence will be considered and not only evidence which, under strict legal

---

[466] Treaty 10, in Fedirchuk & McCullough, appendix III, at xlvi.

[467] See pp. 181-83 above discussing the mandate of the Commission.

rules, would be admissible in a court of law.[468]

The Government of Canada submits that there is a limit to the use we can make of historical information, even under the policy. We disagree. Our responsibility is to consider all relevant historical evidence. Guideline 6 forms "an integral part of the Government's policy on specific claims. . ."[469] The obligation of the Department of Justice and the Department of Indian Affairs and Northern Development under that policy is the same.

Moreover, we consider this to be a wise policy and we are not prepared to deviate from it. Indeed, we are precluded, as are the departments themselves, from relying upon strict legal rules of admissibility which would apply in a court of law. We are not a court of law.

Counsel for Canada made only one submission in relation to guideline 6. They directed us to another guideline which states that "Treaties are not open to renegotiation."[470] In effect, counsel argue that "all relevant historic evidence" cannot be used so as to rewrite the treaties. With respect, we do not believe that that is what we are doing here. We are seeking the proper interpretation of Treaties 6 and 10 and are directed by the policy to examine the relevant historical evidence which assists us in that regard.

We have another concern with this submission. It implies that the departments of Indian Affairs and Justice are not following the policy and that, in assessing the validity of specific claims, they are disregarding the relevant historical evidence. If that is the case, they are in error.

---

[468] *Outstanding Business*, at 30.

[469] *Outstanding Business*, at 29.

[470] *Outstanding Business*, at 30.

Government counsel advanced the further proposition that the historical evidence, particularly oral assurances given by Treaty Commissioners, are irrelevant, since the treaties are not ambiguous. They referred us to the decision of the Supreme Court of Canada in *Horse v. The Queen*.[471] There, the Court decided that, in the absence of an ambiguity, documents and other evidence outside a treaty could not be used as an aid to interpreting it. We note, however, that the Supreme Court of Canada held in *R. v. Horseman*, in the context of that case, that extrinsic evidence could be admitted to resolve an ambiguity or inconsistency.[472]

Counsel for the claimants referred us to the Ontario Court of Appeal decision in *R. v. Taylor and Williams*, where an oral promise made by a Treaty Commissioner was made a term of the treaty.[473]

These decisions may be inconsistent on the issue of what evidence a court will admit in interpreting a treaty, but we are not a court of law. The specific claims policy directs us to consider "all relevant historic[al] evidence," not only evidence admissible in a court of law under strict legal rules.

It is important to distinguish this Commission from a court of law. We are a Commission of Inquiry and have as our main duty the task of inquiring into certain decisions made by the branch of the Department of Indian Affairs referred to in the policy as the Office of Native Claims.[474] That office is charged with the responsibility of reviewing Indian land claims and, if validated, negotiating a settlement of that claim with the Band. The office is guided in considering claims, just as this Commission is, by the specific claims policy.[475]

---

[471] [1988] 1 SCR 187, [1988] 2 WWR 289, [1988] 2 CNLR 112 (SCC). The rule, which limits reference to extrinsic evidence, is restated in *R. v. Sioui*, [1990] 1 SCR 1025 at 1049, 70 DLR (4th) 427 at 445, [1990] 3 CNLR 127 at 143: "[E]xtrinsic evidence is not to be used as an aid to interpreting a treaty in the absence of ambiguity or where the result would be to alter its terms by adding words to or subtracting words from the written agreement. This rule also applies in determining the legal nature of a document relating to the Indians."

[472] [1990] 1 SCR 901, 108 NR 1, [1990] 3 CNLR 95. The Court did refer to the report of the Treaty Commissioners in that case: [1990] 1 SCR at 929, 108 NR at 27, [1990] 3 CNLR at 101.

[473] (1981), 34 OR (2d) 360, 62 CCC (2d) 227, [1981] 3 CNLR 114 (CA). This case was also approved in *R. v. Sioui*, [1990] 1 SCR at 1068, 70 DLR (4th) at 461, [1990] 3 CNLR at 155.

The objective of *Outstanding Business*, ONC, and this Commission is to provide Bands and government with an alternative to court. As *Outstanding Business* says,

> Negotiations . . . remain the preferred means of settlement by the government, just as it has been generally preferred by Indian claimants.[476]

In interpreting the treaties, we are also mindful of the reasoning of Mr. Justice Dickson, as he then was, of the Supreme Court of Canada, when he referred to:

> the generally accepted view that Indian treaties should be given a fair, large and liberal interpretation in favour of the Indians. This principle of interpretation was most recently affirmed by this Court in *Nowegijick v. The*

---

[474] Currently the Specific Claims and Treaty Land Entitlement Branch of the department is responsible for claims referrable to the Commission.

[475] See, generally, *Outstanding Business*.

[476] *Outstanding Business*, at 19.

Queen . . . I had occasion to say the following . . . [477]

> It seems to me, however, that treaties and statutes relating to Indians should be liberally construed and doubtful expressions resolved in favour of the Indians . . . In *Jones v. Meehan*, 175 U.S. 1 (1899), it was held that Indian treaties "must . . . be construed, not according to the technical meaning of their words . . . but in the sense in which they would naturally be understood by the Indians.[478]

In our view, this decision defines the general approach that should be followed in the interpretation of Indian treaties. We have endeavoured to apply that approach to the circumstances of this case, having full regard to all the relevant historical evidence.

THE RELEVANT HISTORICAL EVIDENCE

Having established our prescribed approach to treaty interpretation, we must next consider all the relevant historical evidence so that we might properly ascertain the interpretation of and meaning to be given to Treaties 6 and 10.

The written submissions of the Government of Canada set out certain oral statements of senior government officials and Treaty Commissioners who were responsible for negotiating the terms and obtaining the signatures of the Indians to the treaties.

---

[477] *Nowegijick v. The Queen*, [1983] 1 SCR 29 at 36, 144 DLR (3d) 193 at 198, [1983] 2 CLNR 89 at 94, approved in relation to treaties in *Mitchell v. Peguis Indian Band*, [1990] 2 SCR 85 at 136, 70 DLR (4th) 193 at 230, [1990] 3 CNLR 46 at 60 (La Forest J).

[478] *Simon v. The Queen*, [1985] 2 SCR 387 at 402, 24 DLR (4th) 390 at 402, [1986] 1 CNLR 153 at 167, applied in *R v. Sioui* [1990] 1 SCR 1025 at 1049, 70 DLR (4th) 427 at 445, [1990] 3 CNLR 127 at 143 .

In connection with the securing of Treaty 6, the following oral statements were reported to Ottawa by Lieutenant-Governor Alexander Morris on his discussions and meetings with the Indians at Fort Carlton, August 18, 1876:

> I had ascertained that the Indian mind was oppressed with vague fears; they dreaded the treaty; they had been made to believe that they would be compelled to live on the reserves wholly; and abandon their hunting . . .
>
> I accordingly shaped my address, so as to give them confidence in the intentions of the government, and to quiet their apprehensions. I impressed strongly on them the necessity of changing their present mode of life . . .[479]

The narrative of the proceedings and speeches of the Indians and Treaty Commissioners at Forts Carlton and Pitt reveal the following exchanges:

> GOVERNOR: Understand me, I do not want to interfere with your hunting and fishing. *I want you to pursue it through the country, as you have heretofore done; but I would like your children to be able to find food for themselves and their children that come after them* . . .
>
> TEE-TEE-QUAY-SAY: We want to be at liberty to hunt on any place as usual. If it should happens that a government bridge or scow is built on the Saskatchewan at any place, we want free passage . . .
>
> GOVERNOR: You want to be at liberty to hunt as before. I told you *we did not want to take that means of living*

---

[479] See Submissions on Behalf of the Government of Canada, at 51 and following, excerpted from Morris, note 12 above, at 183.

> *from you, you have it the same as before*, only this, if a man, whether Indian or Halfbreed, had a good field of grain, you would not destroy it with your hunt . . .
>
> I have answered your requests very fully, and that there be no mistake as to what we agree upon, it will be written down, and I will leave a copy with the two principal Chiefs, and as soon as it can be properly printed I will send copies to the Chiefs so that they may know what is written and there can be no mistake . . .
>
> I want the Indians to understand that all that has been offered is a gift, and *they still have the same mode of living as before* . . .
>
> I wish you to understand fully about two questions and tell the others. The North-West Council is considering the framing of a law to protect the buffaloes, and to make it, they will expect the Indians to obey it. *The government will not interfere with the Indian's daily life, they will not bind him. They will only help him to make a living on the reserves by giving him the means of growing from the soil, his food.*[480]

Subsequent to the oral statements and promises noted above, Treaty 6 was concluded in 1876 with the relevant provision reading as follows:

> Her Majesty further agrees with Her said Indians that they, the said Indians, *shall have the right to pursue their usual avocations of hunting and fishing throughout the tract surrendered as hereinbefore described*, subject to such regulations as may from time to time be made by Her government of Her Dominion of Canada, and *saving and excepting such tracts as may from time to time be required or taken up for settlement, mining, lumbering, or other purposes...*[481]

---

[480] Morris, note 12 above, at 204, 215, 218, 219, 221, 241. Emphasis added.

[481] See text at notes 232-33 above.

Similar statements were made by Treaty Commissioner J.A.J. McKenna in connection with the securing of Treaty 10. In his report dated January 18, 1907, he described the following:

> There was general expression of fear that the making of the treaty would be followed by the curtailment of their hunting and fishing privileges, and the necessity of not allowing the lakes and the rivers to be monopolized or depleted by commercial fishing was emphasized . . .
>
> *I guaranteed that the treaty would not lead to any forced interference with their mode of life.* I explained to them that, whether treaty was made or not, they were subject to the law, bound to obey it and liable to punishment for any infringement thereof; that it *was designed for the protection of all and must be respected by all the inhabitants of the country,* irrespective of colour or origin; and that, in requiring them to abide by it, they were only required to do the duty imposed upon all the people throughout the Dominion of Canada. I dwelt upon the importance, in their own interest, of the observance of the laws respecting the protection of fish and game . . .
>
> In the main the demand will be for ammunition and twine, as the great majority of the Indians will continue to hunt and fish for a livelihood. *It does not appear likely that the conditions of that part of Saskatchewan covered by the treaty will be for many years so changed as to affect hunting and trapping, and it is expected, therefore, that the great majority of the Indians will continue in these pursuits as a means of subsistence.*
>
> The Indians were given the option of taking reserves or land in severalty, when they felt the need of having land set apart for them. I made it clear *that the government had no desire to interfere with their mode of life* or to restrict them to reserves and that it undertook to have land in the proportions stated in the treaty set apart

> for them, when conditions interfered with their mode of living and it became necessary to secure them possession of land.[482]

The Canoe Lake Cree Nation became parties to Treaty 10 in 1906. The relevant portion of that treaty provides:

> And His Majesty the King hereby agrees with the said Indians that *they shall have the right to pursue their usual vocations of hunting, trapping, and fishing throughout the territory surrendered* as heretofore described, subject to such regulations as may from time to time be made by the government of the country acting under the authority of His Majesty and *saving and excepting such tracts as may be required or as may be taken up from time to time for settlement, mining, lumbering, trading or other purposes.* [483]

Taken in its entirety, the foregoing "relevant historic[al] evidence" leads us clearly to the following conclusions:

- In negotiating these treaties, the government's objective and purpose was to extinguish the Indian title to the treaty lands, opening those lands as and when needed for settlement, lumbering, mining, and other purposes. At the same time, the government wished to protect the Indian economy which was based upon hunting, trapping, and fishing in their traditional areas.[484]

---

[482] Report of Commissioner J.A.J McKenna to the Superintendent General of Indian Affairs, 18 January 1907, in Supplementary Authorities on Behalf of the Canoe Lake Cree Nation, Tab 1, at 6, 7, and 8. See, generally, Submissions of the Government of Canada, pp. 51-53, and Submissions of the Canoe Lake First Nation, pp. 2-3.

[483] See text at note 19 above.

- The Cold Lake First Nations' and the Canoe Lake Cree Nation's interest in entering into the treaties was to protect their rights to hunt, trap, and fish as they had always done in their traditional areas. These rights were fundamental to them in terms of physical, economic, and cultural survival. The strong assurances and guarantees that these rights would continue, and the promise of other benefits, were the inducements that ultimately persuaded the leaders of the day to sign the treaties.

- The treaty rights of the Cold Lake First Nations and the Canoe Lake Cree Nation, which included hunting, trapping, and fishing, did extend into the area now occupied by the Primrose Lake Air Weapons Range. These rights existed prior to the time of treaty for each First Nation and were exercised continuously up to the creation of the range.

Counsel for the Government of Canada argue the Crown was entitled, under the treaties, to take up unoccupied Crown lands for any purpose, at any time, without any obligation to compensate Treaty Indians for the loss of treaty harvesting rights.[485] We disagree.

In our view, no reasonable interpretation of these treaties would allow government to destroy the Indian economies upon which the treaties were premised.

---

[484] See *Horseman*, [1990] 1 SCR at 928, 108 NR at 8, [1990] 3 CNLR at 100.

[485] See Submissions on Behalf of the Government of Canada, at pp. 41-44.

That, however, is precisely what was done here through the expulsion of the claimant First Nations from the most valuable of their traditional lands. Government's right to take up lands for settlement and other purposes is certainly contemplated in the language of the treaties. However, in our view, government cannot rely on such language in a treaty to completely frustrate the rights of the Indians which are guaranteed in the same document.

In our view, the language of the treaties alone is sufficient to reach this conclusion. Counsel for Canada submitted that the express rights of government to take up lands, and of Indians to hunt, trap, and fish as they had before, "must be interpreted in such a way as to reconcile the competing interests of the parties."[486] We do not need to look beyond the treaty itself to identify the nature of these interests or to conclude, as we have, that the one cannot be permitted to overwhelm the other so completely and so suddenly as was done here. The full historical background serves to confirm the significance of the undertakings given to the Treaty Indians and the extent of the breach.

We agree with the Court in the case of *Mitchell v. Peguis Indian Band* where it said:

> It would be highly incongruous if the Crown, given the tenor of its treaty commitments, were permitted ... to diminish in significant measure the ostensible value of the

---

[486] Submissions on Behalf of the Government of Canada, at 55. See also *St. Catherine's Milling and Lumber Co. Ltd. v. The Queen* (1888), 14 App. Cas. 46 at 60, 2 CNLC 541 at 555: "There may be other questions behind, with respect to the right to determine to what extent, and at what periods, the disputed territory, over which the Indians still exercise their avocations of hunting and fishing, is to be taken up for settlement or other purposes, but none of these questions are raised for decision in the present suit."

rights conferred.[487]

We find that the Crown did not have the right, under the terms of the treaties, to do what was done here. The scale of their project is too large, the lands concerned too valuable to the claimant First Nations, and the damage done to their economies and to the way of life of their communities is too great. The government breached Treaties 6 and 10 in respect of the rights of the Cold Lake First Nations and the Canoe Lake Cree Nation.

Counsel for Canada argue further, however, that the treaty rights did not survive in their original form until 1954, when the claimants were excluded from the air weapons range. This, they say, is the effect of the Natural Resources Transfer Agreements with Saskatchewan and Alberta.

NATURAL RESOURCES TRANSFER AGREEMENTS

The purpose of the Natural Resources Transfer Agreements was to place the provinces of Manitoba, Saskatchewan, and Alberta on the same constitutional footing as other provinces in terms of administration and control of, and legislative power over, their natural resources. Before 1930, Crown lands, mines, minerals, waters, and royalties in the Prairie provinces were vested in, and administered by, the Government of Canada. In order to effect the change, the *Constitution Act, 1930*,[488] was enacted and the respective agreements with each province are schedules to that Act. In both the Saskatchewan and the Alberta Agreements, paragraph 12 is worded as follows:

---

[487] [1990] 2 SCR 85 at 136 , 71 DLR (4th) 193 at 230, [1990] 3 CNLR 46 at 60 (La Forest J).

[488] 20-21 George V, c. 26 (UK), reprinted in RSC 1985, App. II, No. 26.

> In order to secure to the Indians of the Province the continuance of the supply of game and fish for their support and subsistence, Canada agrees that the laws respecting game in force in the Province from time to time shall apply to the Indians within the boundaries thereof, provided, however, that the said Indians shall have the right, which the Province hereby assures to them, of hunting, trapping and fishing game and fish for food at all seasons of the year on all unoccupied Crown lands and on any other lands to which the said Indians may have a right of access.

Prior to this constitutional amendment, it appears that treaty harvesting by Indians was subject only to regulation by Parliament, as expressly provided in Treaties 6 and 10[489] and as generally provided by section 91(24) of the *Constitution Act, 1867*, which assigned to Parliament legislative jurisdiction over "Indians and Lands reserved for the Indians."[490] Paragraph 12 of the Agreements transfers to the provinces restricted legislative jurisdiction to regulate Indian hunting, trapping, and fishing. To accommodate this, and other transfers of federal jurisdiction to the provinces, the Transfer Agreements took effect "notwithstanding anything in the Constitution Act, 1867."[491]

The argument on behalf of government is that the effect of paragraph 12 was to extinguish the treaty rights of the claimants to hunt, trap, and fish for commercial purposes. This argument rests on the decision of the Supreme Court of Canada in *Horseman v. The Queen*, where the majority ruled as follows:

---

[489] In Treaty 6, harvesting rights are "subject to such regulations as may from time to time be made by Her Government of Her Dominion of Canada." See note 233 above. Treaty 10 refers to regulations made "by the government of the country acting under the authority of His Majesty." See note 19 above.

[490] See also *Indian Act*, RSC 1927, c. 98, s. 69, authorizing notices that game laws in force in Manitoba, Saskatchewan, Alberta, and the Territories, or that some of those laws, shall apply to Indians.

[491] *Constitution Act, 1930*, s. 1.

> Although the Agreement did take away the right to hunt commercially, the nature of the right to hunt for food was substantially enlarged. The geographical areas in which the Indian people could hunt was widely extended. Further, the means employed by them in hunting for their food was placed beyond the reach of provincial governments . . .
>
> . . .
>
> . . . [A]lthough it might well be politically and morally unacceptable in today's climate to take such a step as that set out in the 1930 Agreement without consultation with and concurrence of the native peoples affected, nonetheless the power of the federal government to unilaterally make such a modification is unquestioned and has not been challenged in this case.[492]
>
> . . .
>
> . . . The 1930 Agreement widened the hunting territory and the means by which the Indians could hunt for food thus providing a real *quid pro quo* for the reduction in the right to hunt for purposes of commerce granted by the Treaty of 1899 . . . I therefore conclude that the 1930 Transfer Agreement did alter the nature of the hunting rights originally granted by Treaty 8.[493]

A strong dissent in this case was written by Madam Justice Wilson, who saw the NRTA as dealing only with regulation of commercial rights, not extinguishment:

---

[492] The majority is saying here that Parliament did have the power to alter treaty rights by legislation or, as in that case, by applying to the Parliament of the United Kingdom for a constitutional amendment, without securing the consent of the Indian parties to the treaties. That position was not challenged by counsel for Mr. Horseman.

[493] [1990] 1 SCR at 933-36, 108 NR at 15-18, [1990] 3 CNLR at 104-06 (Cory J).

> Given that Treaty 8 embodied a solemn engagement on the part of the government of Canada to respect a way of life that was built around hunting, fishing and trapping, given that our courts have on a number of occasions emphasized that we should seek to give meaning to the language used in para. 12 [of the Agreements] by looking to Treaty 8, and given that this Court's decision in *Sutherland*[494] urged that para. 12 be given a "broad and liberal" construction, it seems to me that we should be very reluctant to accept any meaning of the term "for food" that would constitute a profound inroad into the ability of Treaty 8 Indians to engage in the traditional way of life which they believed had been secured to them by the treaty.
>
> . . .
>
> . . . [I]f we are to approach para. 12 as a proviso that was intended to respect the guarantees enshrined in Treaty 8 (which I think we must do if at all possible), then para. 12 must be construed as a provision conferring on the province of Alberta the power to regulate sport hunting and hunting for purely commercial purposes . . .[495]

Assuming that commercial rights under the treaty were extinguished in the manner stated by the majority in the above decision, the treaty rights to hunt, trap, and fish *for food* continued. Counsel for Canada argue that these rights could be exercised only so long as lands remained unoccupied or so long as Indians had a right of access to such lands. This argument too rests on paragraph 12, and suggests that such rights were extinguished in the air weapons range when government occupied those lands and excluded everyone, including Indians, from them.

---

[494] [1980] 2 SCR 451, 113 DLR (3d) 374, [1980] 3 CNLR 71 (SCC).

[495] [1990] 1 SCR at 917, 920, 108 NR at 36, 39, [1990] 3 CNLR at 116-18 (Wilson J).

There is, in our view, no distinction between implicit "occupation" under the Agreements and express "taking up" of lands under the treaties. If the treaties were breached, as we have found, and even if that breach relates only to the food-harvesting rights which survived paragraph 12, the issue becomes the claimants' right to compensation.

THE RIGHT TO COMPENSATION

Having decided that the treaties have been breached, it seems clear to us that a right to compensatory damages or other relief arises. However, the Crown argues that this is not so for two reasons. First, they point out that the treaties do not provide for compensation when unoccupied lands are "taken up" for settlement or other purposes. Secondly, they argue that the Natural Resources Transfer Agreements (*Constitution Act, 1930*) do not provide for compensation when unoccupied lands become occupied.[496] On both points, they submit that there is no case law to support the proposition that a right to compensation arises where lands are taken up to the prejudice or exclusion of treaty harvesting rights.

On the first point, it is not surprising that the treaties do not deal with the issue of compensation for breach of treaty. Treaties are, as the courts have frequently pointed out, agreements *sui generis*,[497] "the nature of which is sacred."[498]

---

[496] Submissions on Behalf of the Government of Canada, at 46-49.

[497] Meaning "unique" in legal terms. See *Simon*, [1985] 2 SCR at 404, 24 DLR (4th) at 404, [1986] 1 CNLR at 169.

In the spirit of reconciliation, trust, and good faith which prevailed in treaty negotiations such as those which occurred here, it was not assumed that government would breach its obligations and no provision was made for any such breach.[499] That does not mean that the Indians would have no rights, including a right of compensation, when a breach occurred.

The Natural Resources Transfer Agreements make no provision for compensation when unoccupied Crown lands are occupied in a manner prejudicial to Indian harvesting rights. Nor is there any provision which would exclude compensation in an appropriate case. These Agreements, in our view, neither add to nor subtract from any right of compensation when government breaches its duties under treaty.

Neither counsel for Canada nor counsel for the First Nations have referred us to any case law to guide us on the issue of compensation for breach of treaty in the circumstances of an extreme dislocation from traditional lands resulting in a devastation of the Indian economy. Not every taking up of treaty land for settlement or other purposes would constitute a breach of treaty. That, however, does not persuade us that compensation and other remedies are not available when a breach on the scale that we have found here occurs.

We are prepared to accept that the treaty right breached in 1954 was the food-harvesting right. On the information available in the records of the inquiries, it would appear that this was more valuable to the claimants than the income they derived from commercial harvesting. We therefore find that compensation was due

---

[498] *Sioui*, [1990] 1 SCR at 1063, 70 DLR (4th) at 456, [1990] 3 CNLR at 152.

[499] See Treaty 10, however, where it is contemplated that individual Indians may, from time to time, break treaty: Fedirchuk & McCullough, app. III, at xlvii.

for breach of the treaty rights of the claimants to hunt, trap, and fish for food. In addition, government acknowledged its intention from the beginning to compensate commercial harvesters. The records of the inquiries show clearly that compensation was intended to be paid in respect of both sets of rights which were originally confirmed in the treaties.

Accordingly, the issue relating to compensation is not whether compensation was a lawful obligation, which it was, but who was entitled to such compensation and what full and fair compensation should have been in all the circumstances of these claims. In order to address that issue properly, it is necessary to consider the fiduciary role of the Crown in these transactions.

THE CROWN WAS A FIDUCIARY FOR THE CLAIMANTS

In our view it is unquestionable that in its dealings with the claimants the Crown was a fiduciary. There are three grounds for that finding.

First, it has been held at the highest level of Canadian courts that the nature of the relationship between Canada and Canada's aboriginal people is fiduciary, and that section 35(1) of the *Constitution Act, 1982*,[500] must be read in that light. This fiduciary principle was established, in the context of the relationship between the Crown and aboriginal peoples, by the Supreme Court of Canada in *Guerin v. The Queen*.[501]

In *R. v. Sparrow*,[502] Chief Justice Dickson and Mr. Justice La Forest, writing for the Court, noted that, in *Guerin*, "[t]he *sui generis* nature of Indian title and the historic powers and responsibilities assumed by the Crown constituted the source of such a fiduciary obligation." The Court went on to say:

---

[500] *Constitution Act, 1982*, Part II, being Schedule B to the *Canada Act, 1982* (U.K.), 1982, c. 11. S. 35(1) reads as follows: "The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed."

[501] [1984] 2 SCR 335, [1984] 6 WWR 481, [1985] 1 CNLR 120.

[502] [1990] 1 SCR 1075, 70 DLR (4th) 385, [1990] 3 CNLR 160.

> In our opinion *Guerin*, together with *R. v. Taylor and Williams* (1981), 34 O. R. (2d) 360, [1981] 3 C.N.L.R. 114, ground a general guiding principle for s. 35 (1). That is, the Government has the responsibility to act in a fiduciary capacity with respect to aboriginal peoples. The relationship between the Government and aboriginals is trust-like, rather than adversarial, and contemporary recognition and affirmation of aboriginal rights must be defined in light of this historic relationship.[503]

These passages were expressly applied in a recent decision of the Federal Court of Appeal, *Apsassin v. Canada*,[504] where the fiduciary principle is discussed at length in relation to a fact situation that arose prior to 1982, when section 35 (1) came into effect.

The second ground for our finding that the Crown was a fiduciary in these cases is based upon the Crown's obligations as a party to Treaties 6 and 10. In our view, the breaches of those treaties which we have noted were breaches of fiduciary duties. This proposition was accepted, both by the Crown and the Supreme Court of Canada, in *Bear Island*.

> [T]he Indians adhered to the treaty in exchange for treaty annuities and a reserve. It is conceded that the Crown has failed to comply with some of its obligations under this agreement, and thereby breached its fiduciary

---

[503] [1990] 1 SCR at 1108, 70 DLR (4th) 385 at 408, [1990] 3 CNLR 160 at 180.

[504] [1993] 2 CNLR 20 at 41-66 (Fed. CA).

> obligations to the Indians.[505]

The third ground is the Department of Citizenship and Immigration's unilateral undertaking to negotiate on the claimants' behalf. This status was later confirmed by the request made a year later by the Indians that "the Indian Department act on their behalf until final settlement was reached."[506] The proposition that a fiduciary obligation may arise from a unilateral undertaking is established in *Guerin*, where the Supreme Court held,

> [W]here by statute, agreement, or perhaps *by unilateral undertaking*, one party has an obligation to act for the benefit of another, and that obligation carries with it a discretionary power, the party thus empowered becomes a fiduciary. Equity will then supervise the relationship by holding him to the fiduciary's strict standard of conduct.[507]

Given the Department of Citizenship and Immigration's original undertaking to act on behalf of the Indians, their later request and the department's tacit agreement to it were unnecessary. Either could give rise to a fiduciary relationship.

> Nor do I think it can make any difference whether the duty arises from contract or is connected with some

---

[505] *Attorney General of Ontario v. Bear Island Foundation*, [1991] 2 SCR 570 at 572, 83 DLR (4th) 381 at 384, [1991] 3 CNLR 79 at 81. See also *R. v. Bombay*, [1993] 1 CNLR 92 at 94 (Ont. CA) and, generally, *R. v. Sparrow*, note 502 above.

[506] W.G. Tunstead to H.R. Conn, 30 December 1953, NA, RG 10, vol. 7335, file 1/20-9-5 (ICC, Documents, at 438).

[507] [1984] 2 SCR at 384, [1984] 6 WWR at 501, [1985] 1 CNLR at 137. Emphasis added.

> previous request, or whether it is self-imposed and undertaken without any authority whatever.[508]

In our view, any of the three grounds above would be sufficient to establish the Crown's fiduciary obligations in the matters before us. We are confirmed in that view by reference to the following statement about the formation of fiduciary relationships approved by the Supreme Court of Canada.

> Relationships in which a fiduciary obligation have been imposed seem to possess three characteristics:
>
> (1) The fiduciary has scope for the exercise of some discretion or power.
>
> (2) The fiduciary can unilaterally exercise that power or discretion so as to affect the beneficiary's legal or practical interests.
>
> (3) The beneficiary is peculiarly vulnerable to or at the mercy of the fiduciary holding the discretion or power.[509]

These tests can be applied generally and specifically to the matters at hand. Generally, we find that the decision to exclude the claimants from the air weapons range reflected the scope of the Crown's power to act unilaterally in a manner that would have a profound effect upon the legal and practical interests of the claimants, who were completely vulnerable to the exercise of that power. Specifically, we find that the Department of Citizenship and Immigration, in its role of negotiating compensation for Treaty Indians, did have and did exercise its own discretion in formulating, advancing, later modifying, and finally compromising their entitlement. That discretion was exercised unilaterally, since there is no indication in the record of these inquiries that any of the above measures were discussed with the claimants in advance of being taken forward to, or agreed upon with, other branches of government. The impact of the department's actions upon the claimants' legal and practical interests is beyond dispute. Whether the issue be approached from the general or the specific analysis, it is the Crown in right of Canada which is responsible, as a fiduciary, and we so find.

---

[508] *Lyell v. Kennedy* (1889), 14 App. Cas. 437 at 463.

[509] *Frame v. Smith*, [1987] 2 SCR 99 at 136 (1987), 78 NR 40 at 79 (Wilson J), approved in *Lac Minerals v. International Corona Resources Ltd.*, [1989] 2 SCR 574 at 599, 646, 61 DLR (4th) 14 at 27, 63.

THE CONSEQUENCES OF THIS FIDUCIARY RELATIONSHIP

A fiduciary is subject to the highest standards of conduct known to the law:

> The fiduciary relationship has trust, not self-interest, at its core, and when breach occurs, the balance favours the person wronged. The freedom of the fiduciary is diminished by the nature of the obligation he or she has undertaken - an obligation which betokens loyalty, good faith and avoidance of a conflict of interest.[510]

In a more recent case, the Supreme Court examined the underlying basis for this high standard: "In short, equity is concerned, not only to compensate the plaintiff, but to enforce the trust which is at its heart." [511]

Just what is demanded of the fiduciary in different circumstances depends on the circumstances. This was recognized in the Supreme Court's decision in *K.M. v. H.M.*, in which Mr. Justice La Forest observed that "the nature of the obligation will vary depending on the factual context of the relationship in which it arises," and

---

[510] *Canadian Aero Services Ltd. v. O'Malley*, [1974] SCR 592 at 606, 40 DLR (3d) 371 at 382 (SCC).

[511] *Canson v. Boughton*, [1991] 3 SCR 534 at 543, 85 DLR (4th) 129 at 154 (McLaughlin J).

> not all fiduciary relationships and not all fiduciary obligations are the same; these are shaped by the demands of the situation.[512]

We are assisted in understanding the nature of the fiduciary relationship between the Crown and aboriginal people by earlier decisions which described it as a trust relationship, a trust-like relationship, a political trust, and a wardship.[513] In the present situation, even DND was "prepared to recognize, within reasonable limits, the special position of Treaty Indians as Wards of the Crown."[514] There is no doubt that, in fact, these dispossessed people relied wholly on the Crown's good faith, and had no choice but to do so. The fiduciary duty to look after their interests could hardly have been higher.

The courts have not yet spelled out all the implications of the Crown's fiduciary obligation to aboriginal people, yet they have furnished some further guidance in cases involving the Crown's obligations to them.

In *Apsassin*, the Crown wanted a surrender in order to make the lands available for war veterans. The Court imposed a duty on the Crown to advise the Indians whether it was in their best interests to surrender [reserve lands] for sale or lease." Mr. Justice Stone went on to say: "In my view, the Crown as a fiduciary was required to put the interests of the Indians ahead of its own interests in the surrendering of the reserve lands."[515] Where a similar situation arose in *Kruger v. The Queen*, Mr. Justice Stone held that the Crown "was under an overriding duty to secure to the Indian people affected a sum of money that represented to them the value of their interest in the land."[516]

---

[512] *K.M. v. H.M.*, [1992] 3 SCR 6 at 61-62, 142 NR 321 at 387, referred to and quoted extensively in *Apsassin v. Canada*, [1993] 1 CNLR at 42-45.

[513] See, for example, *R. v. Sparrow*, note 502 above; *Guerin v. The Queen*, note 501 above; *St. Ann's Island Shooting and Fishing Club Ltd. v. The King*, [1950] SCR 211, [1950] DLR 225, 5 CNLC 608 (esp. Rand J).

[514] F.R. Miller to Laval Fortier, 30 September 1958, NA, RG 10, vol. 7336, file 1/20-9-5 (ICC, Documents, at 1197).

In *Guerin*, the fiduciary duty demanded the "utmost loyalty" of the Crown to the Band. Yet the Crown had leased reserve lands on terms less favourable than the Band had approved, without consulting the Band, and then persisted in keeping the terms of the lease secret. The trial judge found this to be a breach of duty and awarded $10 million in damages against the Crown. This decision was upheld in the Supreme Court of Canada, where the Crown's conduct was held to be "unconscionable."

In the present claims, the Department of Citizenship and Immigration was negotiating compensation with other departments. It was struggling to obtain fair compensation. The discussion was protracted and, at times, acrimonious. Yet, notwithstanding that the claimants' interests were vitally at stake, they were not included in the discussion. Rather, there was a deliberate policy of secrecy. Despite repeated inquiries from the Chiefs of Canoe Lake and Cold Lake, government officials were repeatedly instructed not to reveal any information.[517]

---

[515] [1993] 2 CNLR at 46.

[516] *Kruger v. The Queen*, [1986] 1 FC 3, where reasons of Stone J are abridged at 57-58. For full reasons, see (1985), 17 DLR (4th) 591 at 659, [1985] 3 CNLR 15 at 55 (CA).

[517] See, for example, R.F. Battle to S.C. Knapp, 13 June 1965, NA, RG 10, vol. 7335, file 1/20-9-5 (ICC, Documents, at 660); J.P.B. Ostrander to E.S. Jones, 25 July 1956, NA, RG 10, vol. 7335, file 1/20-9-5 (ICC, Documents, at 937); J.H. Gordon to E.S. Jones, 21 August 1958, NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 1178); Cold Lake Transcript,

The effect of the policy of secrecy was not only to leave the claimants out of the discussion, but to deprive them of any basis for participating in it. That they greatly desired to do so is obvious from their repeated inquiries. It is not possible to say exactly what they might have done if fully informed, but it is reasonable to think they might have balked at signing the releases demanded by Citizenship and Immigration had they known the extent of the compromise that department had made.

The government relies on those releases as a bar to any claim on behalf of the individuals who signed them. Yet both their form and the circumstances in which they were obtained are disturbing.

The form of release can be seen at pages 66 and 148 of this report. Before these were prepared, DND had won its fight to be released from any further obligation to the Indians in exchange for one further payment. DND did not stipulate, nor was there any agreement, that the payment would release government from any further responsibility for the damage caused by the range. DND was aware of the need for long-term rehabilitation, but insisted that was someone else's responsibility.

The Indian Affairs Branch was well aware of the need for rehabilitation. It had fought for it from the first. It was also aware of the huge difference between what it had proposed for compensation to Treaty Indians, and what DND had paid. At that point, it appeared to give up the fight for fairer compensation and rehabilitation, and decided to use DND's final payment as the basis for a release of all claims. When it was advised by its lawyers that a more formal document was not required, the department resorted to the device of drawing up a release,

---

vol. VIII, at 947-48, 951-52 (Stan Knapp).

which its officials referred to as a receipt or quit-claim.

This was presented to those for whom cheques had been prepared on a take-it-or-leave-it basis. They were informed that the cheques were in final payment of any claim against the government. Everyone took the cheques.

This story gives rise to serious questions of propriety. First, the simple act of demanding wholesale releases in order to serve the government's interest against the Indians was unconscionable. A department aware of the need for fairer compensation and for economic rehabilitation should have neither prepared such releases, nor relied upon them to avoid its responsibilities. We note that when DND felt that Métis claimants had been treated unfairly, more compensation was paid despite the fact that releases had previously been signed. Citizenship and Immigration breached, and then simply abandoned, its duties to these claimants. "Equity will not countenance unconscionable behaviour in a fiduciary, whose duty is that of utmost loyalty to his principal."[518]

There is another aspect of the release story which reveals the breach of duty in another light. The cheques were placed in front of people the department knew to be in necessitous circumstances. When the matter was discussed at Cold Lake, and government explained that if they refused to sign the release they would not get the cheques, Chief Pierre Matchewais said, "We need the money in the worst way . . ."[519] The record of these inquiries shows that the people signed because they needed the money, not because they were willing to abandon their claim for fair compensation. This is supported by the evidence of former Superintendent

---

[518] *Guerin*, [1984] 2 SCR at 388, [1984] 6 WWR at 504, [1985] 1 CNLR at 140 (Dickson J).

[519] Minutes of 14 September 1960 Meeting at Cold Lake, NA, RG 10, vol. 7336, file 1/20-9-5, pt. 7 (ICC, Documents, at 1410).

Knapp, who was present at the above-noted meeting and later when the cheques were distributed at Cold Lake:

> COMMISSIONER PRENTICE: And in your view, did those people have any meaningful alternative other than to sign that quit claim [release] and receive the money, given the circumstances which they were in at that time in 1960?
>
> MR. KNAPP: In the circumstances they had at that time and the sophistication they had at that time, they wanted the money . . . The money stood there; it was available. To get it they had to sign this document.[520]

For a fiduciary to seek a self-serving release is suspicious. To ensure it will be given because the principal has no realistic alternative is unconscionable.

> But not all pressure, economic or otherwise, is recognized as constituting duress. It must be a pressure which the law does not regard as legitimate an it must be applied to such a degree as to amount to 'a coercion of the will' to use an expression found in English authorities, or it must place the party to whom the pressure is directed in a position where he has no 'realistic alternative' but to submit to it. [521]

While the official in charge of obtaining the releases at Canoe Lake painted a rosy picture -- showing "very little destitution" among the "fairly well to do" members of the Band -- the facts were undoubtedly otherwise.[522] The contrary account we heard from witnesses in both communities was supported by Mr. Knapp, who was in a position to know.

---

[520] Cold Lake Transcript, vol. VIII, at 1020 (Stan Knapp).

[521] *Stott v. Merit Investment Corp.* (1988), 63 OR (2d) 545 at 561-62, 48 DLR (4th) 288 at 305 (Ont. CA).

Government counsel submit that those who were faced with the release did have an alternative. Their written submission states: "The alternative to signing the release and receiving the cheque for the final payment was for each claimant to argue their claim before D. N. D." This appears to be drawn from what Mr. Knapp said when appearing before the Commission. It was really his appraisal of the situation after the event: there is no evidence that any official, including Mr. Knapp, told anyone that they could argue for more compensation, nor did he say the individuals were in any position to do so. The only option they were given was to refuse to sign and lose the payment.

These were the people the government was obliged to protect. Taking advantage of their circumstances in this way is, in our opinion, unconscionable conduct not permitted to a fiduciary.

INDIVIDUAL AND BAND COMPENSATION

Government argues that compensation was properly made to individuals holding commercial licences and that they are barred from further relief under the policy by the releases they signed and by a lack of standing to advance a specific claim. We find that not all individuals who were affected by the range were compensated. Many, who did not hold licences, were not compensated at all. In this category were young trappers and fishermen who worked with older family members or as helpers. Others, like loggers, who were also affected economically, were not compensated at all. And those who did hold licences were not fully represented by the department when, for example, they complained about the amounts paid for buildings and equipment. The department found it inexpedient to process such claims. On our review of the full record, it appears that only three individuals who persisted in their efforts to be compensated were added to the list of approved claimants.

---

[522] See, for example, Cold Lake Transcript, vol. III, at 441 (Eva Grandbois); Cold Lake Transcript, vol. II, at 194 (Nora Matchatis); Canoe Lake Transcript, vol. 2, at 169, 154-55, 195-96 (Leon Iron); Canoe Lake Transcript, vol. 1, at 75 (Paul Iron); Canoe Lake Transcript, vol. 1, at 117 (Eli Iron).

We have already dealt with the issue of the releases. We find no reason why the First Nations to which these individuals belong should not represent them in advancing their present claims in addition to the claims which are advanced as community claims to reparations. We do not make any findings here on the claims of any individual, but the right of the First Nations to bring such claims forward in these circumstances is, in our view, unquestionable.

The government's main argument is that only some individuals, not the Bands, were entitled to any compensation at all. This position is directly contrary to the position the Indian Affairs Branch took from the beginning, put into effect at Canoe Lake, and maintained until it lost its battle with DND. Indian Affairs' undertaking to negotiate compensation was made without reserve. It was not limited to individuals, as distinct from Bands. It was made, in effect, on behalf of all Treaty Indians, Bands, and individuals included. Nothing in the record suggests that, when the Indians asked the department to act on their behalf, any restriction or limitation was placed upon its representation. The department gave no indication to anyone, even other departments, that it was not representing all treaty interests affected by the displacement.

The department's attitude was reflected in the MacKay proposal which was the basis for Indian Affairs' first submission, through the Department of Transport, to DND. It accepted, or assumed, that both bands and individuals were entitled to compensation. It proposed compensation for the Cold Lake and Canoe Lake bands and calculated the amount for each in terms of annual payments over 10 years based on actual loss of income and the value of lost food and other resources. Twenty-five per cent of the compensation to Canoe Lake represented the loss to the "band as a whole" to be paid "generally for the hunting and fishing opportunity they are losing." On the recommendation of local officials, the Band share was in fact paid to 18 individuals.[523]

Direct payment was recommended to individuals for loss of buildings and equipment which were the personal property of those individuals.

The MacKay proposal expressly recognized the need for a rehabilitation program and money to fund it. The bulk would be placed in Band funds or a central fund "where it would be available to at least make a substantial contribution toward the rehabilitation program that must be undertaken."[524] That concept was still alive in 1957 when Citizenship and Immigration sought the advice of its legal adviser on how this might be done.[525]

On every occasion when Indian Affairs saw fit to communicate information about compensation, or to discuss decisions which had already been made, the

---

[523] See ICC, Documents, at 863-64, 876, 1559-60, 1566, 1622, 1635, previously noted in this report.

[524] D.M. MacKay to Laval Fortier, 23 April 1952, NA, RG 10, vol. 7334-36, file 1/20-9-5 (ICC, Documents, at 349).

[525] H.M. Jones to D.H. Christie, Indian Affairs Branch Legal Department, 1 March 1957 and J.H. Gordon to R.F Battle, 7 March 1957, both NA, RG 10, vols. 7334-36, file 1/20-9-5 (ICC, Documents, at 991-92, 993).

Chief and Council of each Band were involved. On several occasions, decisions or representations were signalled by Band Council Resolution. On some occasions, these resolutions were requested by government or documents were signed at Band meetings. When asked if the individuals confronted with releases had legal representation, Mr. Knapp said, "They had their chief and council there."[526] The Deputy Minister, Mr. Fortier, referred to negotiations "with individuals or bands of Indians."[527] The community factor was present throughout. The breach of treaty rights, which we have found, was a breach of the rights of those communities and must be recognized as such.

More importantly, Indian Affairs recognized the scope of the damage that was being done to these communities. The numbers of individuals affected by the creation of the range vary from a low of about 600 to a high approaching 2000. On all the evidence, we believe the higher figure to be more accurate. Colonel Jones, who was certainly well informed, noted that rehabilitation on this scale had never been undertaken before.[528] It must have been apparent then, as it is obvious to us now, that no plan of rehabilitation on that scale could have been mounted on anything other than a community basis.

Ultimately, we cannot be sure of the contemporary view because no comprehensive plan for economic rehabilitation was ever developed. The one specific example of the Keeley Lake fishery was conceived by, and intended to benefit, the whole community of Canoe Lake. The acquisition of these rights was funded by the Band in the expectation of reimbursement.[529]

---

[526] Cold Lake Transcript, vol. VIII, at 1011 (Stan Knapp).

[527] See note 184 above.

[528] H.M. Jones to D.M. MacKay, 1 April 1952, NA, RG 10, vol 7334, file 1/20-9-5 (ICC, Documents, at 345).

It is true that no compensation was paid into Band funds. For 10 years, from 1951 to 1961, the departments argued among themselves about compensation and fought over who should pay it. From the beginning it is obvious that Indian Affairs had long-term economic rehabilitation of the communities in mind. After appearing to agree with that approach, at least on an interim basis, DND ultimately refused to acknowledge its responsibility for anything more than compensation to individuals for lost equipment and the like, and compensation for the equivalent of three years' loss of income. It refused to accept responsibility for rehabilitation of the communities whose economic base and way of life had been destroyed by its actions.

Although Citizenship and Immigration had pressed for long-term rehabilitation as part of a compensation package, it lost the fight to get the funds from DND and finally abandoned the effort. No budget was ever put in place for this purpose. No explanation was ever given to the Bands. Having been excluded from the discourse, they were unable to protect themselves, even by adequate protest, from this treatment.

The explanation appears to be that, in the result, no department of government would accept the responsibility for the full consequences of dispossessing the inhabitants of the range lands. Citizenship and Immigration looked to DND, which in turn looked to Citizenship and Immigration.

The result was tragic. Two proud and self-sustaining communities, whose people had made and wished to continue to make their own living, were reduced, almost immediately, to welfare status.

---

[529] See at 80-82 above: "The Keeley Lake Fishery."

CONCLUSIONS

If we are to be true to our mandate, we must be impartial. This Commission was not established to plead the cause of Indians or to act as an apologist for government. We are satisfied, in these inquiries, to let the facts speak for themselves.

This Commission has been asked to examine and report on whether the Government of Canada properly rejected the specific claims submitted by the Cold Lake and Canoe Lake First Nations in 1975 and 1986. In other words, did the Government breach any lawful obligation as set out in *Outstanding Business*. As previously noted, the resolution of this issue involves answering two questions:

1. Did the Government of Canada breach its treaties with the peoples of Cold Lake First Nations (Treaty 6, 1876) and the Canoe Lake Cree Nation (Treaty 10, 1906) by excluding their people from their traditional hunting, trapping, and fishing territories in 1954 so that those lands could be converted for use as the Primrose Lake Air Weapons Range?

2. Did the Government of Canada breach any fiduciary obligation owed to the First Nations, following the exclusion of their people from their traditional territories?

We will now summarize our findings with respect to each question.

Was There a Breach of Treaty?

Our examination of the evidence before us, including the relevant historical evidence, leads us clearly to the following conclusions.

- In negotiating these treaties, the government's objective and purpose was to extinguish the Indian title to the treaty lands, opening those lands as and when needed for settlement, lumbering, mining, and other purposes. At the same time, the government wished to protect the Indian economy based mostly on hunting, trapping, and fishing in their traditional areas.

- The Cold Lake First Nations' and the Canoe Lake Cree Nation's interest in entering into the treaties was to protect their rights to hunt, trap, and fish as they had always done in their traditional areas. These rights were fundamental to them in terms of physical, economic, and cultural survival. The strong assurances and guarantees that these rights would continue, and the promise of other benefits, were the inducements that ultimately persuaded the leaders of the day to sign the treaties.

- The treaty rights of the Cold Lake First Nations and the Canoe Lake Cree Nation, which included hunting, trapping, and fishing, did extend into the area now occupied by the Primrose Lake Air Weapons Range. These rights existed prior to the time of treaty for each First Nation and were exercised continuously up to the creation of the range.

It is our view there is no distinction between an implicit "occupation" under the Natural Resources Transfer Agreements and an express "taking up" of lands under Treaties 6 and 10. We conclude that a right to compensatory damages or other relief arises from this breach of treaties and in our view neither the treaties nor the Natural Resources Transfer Agreements preclude compensation.

In conclusion, therefore, the Government of Canada did breach its treaties with the peoples of the Cold Lake First Nations (Treaty 6 of 1876) and the Canoe Lake Cree Nation (Treaty 10 of 1906) when those people were expelled from their traditional hunting, trapping, and fishing territories in 1954. A right of compensation arises from this breach.

Was There a Breach of Fiduciary Obligation?

Our examination of the evidence before us, including the relevant historical evidence and the full documentary record of these inquiries, leads us clearly to the following conclusions. In its dealings with the claimants, the Crown was a fiduciary for three reasons.

- It is the law of Canada that the nature of the relationship between Canada and Canada's aboriginal people is fiduciary.
- The Crown's obligations are fiduciary duties under Treaties 6 and 10.
- The Department of Citizenship and Immigration's unilateral undertaking to negotiate with and on behalf of the claimant First Nations made the Crown their fiduciary.

The government breached the treaties and in so doing breached its fiduciary obligations thereunder. In addition, the Department of Citizenship and Immigration failed in its duty to represent and inform the claimants during the negotiations. After the final payment made in 1961, that department abandoned the issue of economic rehabilitation. Ultimately it is the Crown in right of Canada that is responsible for these breaches and for the failure to provide full and fair compensation.

The failure here appears to have been less deliberate than misguided or perhaps negligent. It occurred in spite of the conscientious efforts and good intentions of many in government. Yet a failure on the part of the Crown unquestionably occurred, and that had dreadful consequences.

RECOMMENDATION

Under the mandate of this Commission, we can make or withhold a recommendation that a claim referred to us should be accepted for negotiation pursuant to the specific claims policy. Having full regard to that policy, and having found that these claims disclose breaches of treaty and other fiduciary obligations, we therefore recommend to the parties:

> **That the Primrose Lake Air Weapons Range claims of the Canoe Lake Cree Nation and the Cold Lake First Nations be accepted for negotiation under Canada's Specific Claims Policy.**

FOR THE INDIAN CLAIMS COMMISSION

Daniel Bellegarde

Harry S. LaForme
Chief Commissioner

Daniel J. Bellegarde
Commissioner

P.E. James Prentice,QC
Commissioner

August 17, 1993

ANNEX "A"

CANOE LAKE INQUIRY

1 Decision to conduct inquiry October 20, 1992

2 Notices sent to parties October 31, 1992

3 Consultation conference December 3, 1992

The Consultation Conference was held with representatives of the Canoe Lake Cree Nation, Canada, and the Indian Claims Commission at our Toronto office. Matters discussed included hearing dates, translation/ transcription of information, consolidation of documents, procedural and evidentiary rules, the scope of the inquiry, the presentation of legal argument by the participants, and other matters related to the conduct of the inquiry.

4 Community sessions

The panel held community sessions at Canoe Lake on January 18-19, 1993, hearing from 17 community members.

January 18: Joseph Iron, Marius Iron, Francis Durocher, Joseph Opekokew, Paul Iron, Gilbert Iron, Eugene Iron, Christine Iron, Eli Iron, and Gus Coulineur.

January 19: Leon Iron, Ovide Opekokew, Claire Corrigal, Flora Iron, Theodore Iron, Jean-Marie Iron, and Jonas Lariviere.

5 Legal argument: Saskatoon May 6-7, 1993

6 Content of formal record

The formal record for the Canoe Lake Inquiry consists of the following materials:

1) Documentary Record (9 volumes and 1 supplemental volume);
2) Exhibit Book (including documents relating to mandate);
3) Canoe Lake Transcript (2 volumes);
4) Fedirchuk & McCullough Historical Study of Treaties 6, 8 & 10;
5) Written Submissions of Counsel; and
6) Transcript of Oral Submissions.

The report of the Commission and letters of transmittal to the parties will complete the formal record of this inquiry.

ANNEX "B"

COLD LAKE INQUIRY

1 Decision to conduct inquiry October 20, 1992

2 Notices sent to parties October 31, 1992

3 Consultation conference November 24, 1992

The Consultation Conference was held with representatives of the Cold Lake First Nations, Canada, and the Indian Claims Commission at our Ottawa office. Matters discussed included hearing dates, translation/transcription of information, consolidation of documents, procedural and evidentiary rules, the scope of the inquiry, the presentation of legal argument by the participants, and other matters which related to the conduct of the inquiry.

4 Community sessions

The panel held two separate community sessions at the LeGoff Reserve of the Cold Lake First Nations. The first session was held from December 14 to 17, 1992; the second from February 1 to 3, 1993. A total of 38 community members appeared before the Commission.

December 14: Pierre Muskego, Benjamin Francois, Genevieve Andrews, Simon Marten, Ernest Ennow, and Pierre Herman.

December 15: Jobby Metchewais, Nora Matchatis, Catherine Nest, Victor Matchatis, and Mary Martin.

December 16: Charlie Blackman, Louis Janvier, Angelina Janvier, Sarah Loth, Jim Janvier, Toby Grandbois, and Eva Grandbois.

December 17: Moise Janvier, Isabelle Martial, Sophie Minoose, and Dominic Piche.

February 1: John Blackman, Edward Grandbois, Adeline Charland, Victoria Piche, Hazel Jacko, and Lazarre Janvier.

February 2: Genevieve Janvier, Scholastique Scanie, Charlie Metchewais, Francis Scanie, Maurice Grandbois, Eli Minoose, and Allan Jacob.

February 3: John Janvier, Maynard Metchewais, and Marcel Piche.

5 Toronto session April 22, 1993

Mr. Stan Knapp, Superintendent of the Saddle Lake Indian Agency from 1954 to 1962, provided his information to the panel in Toronto.

6 Legal argument: Saskatoon May 7-8, 1993

7 Content of formal record

The formal record for the Cold Lake Inquiry consists of the following materials:

1) Documentary Record (9 volumes and 1 supplemental volume);
2) Exhibit Book (including documents relating to mandate);
3) Cold Lake Transcript (8 volumes);
4) Serecon Agronomic Study of Cold Lake;
5) Fedirchuk & McCullough, Historical Study of Treaties 6, 8 & 10;
6) Written Submissions of Counsel (including "Extracts from Testimony of Cold Lake First Nations Witnesses"); and
7) Transcript of Oral Submissions.

The report of the Commission and letters of transmittal to the parties will complete the formal record of this inquiry

ANNEX "C"

PROCEDURES OF THE CANOE LAKE AND COLD LAKE INQUIRIES

At the beginning of each community session, Chief Commissioner LaForme called the session to order and invited an elder to open the meeting with a prayer. The Chief was then given the opportunity to make some introductory comments. The Chief Commissioner provided the community with a brief explanation of what the role of the Commission is and what the scope of the inquiry would be. Commission counsel introduced all other counsel and provided the Commissioners with notice that, in due course, documents relating to the mandate of the Commission and the formalities of each inquiry would be presented for inclusion in the formal record.

Commission counsel then briefly described the procedures which the parties had agreed to in advance of the community session, subject to approval of the panel, which was given. It was noted for the record that the Commissioners have the authority to prescribe any procedure that they deem appropriate in the circumstances of the inquiry.

Simultaneous translation of the proceedings was provided to give the elders an opportunity to give information and to follow the proceedings in their own languages. The interpreters were later given the opportunity to review the tapes of their translation to ensure that the written transcript would be as complete and accurate as possible.

Witnesses were called and assisted by Commission counsel. They were not sworn in or asked to affirm their evidence on oath. All questions were directed through Commission counsel, with the Commissioners reserving the right to interject at any time. When other counsel wished to raise questions, this was done by providing them in writing to Commission counsel who would then direct the questions to the witness. Witnesses were not subject to cross-examination.

The Commissioners did not adopt any formal rules of evidence in relation to the community information or documents that they were prepared to consider.